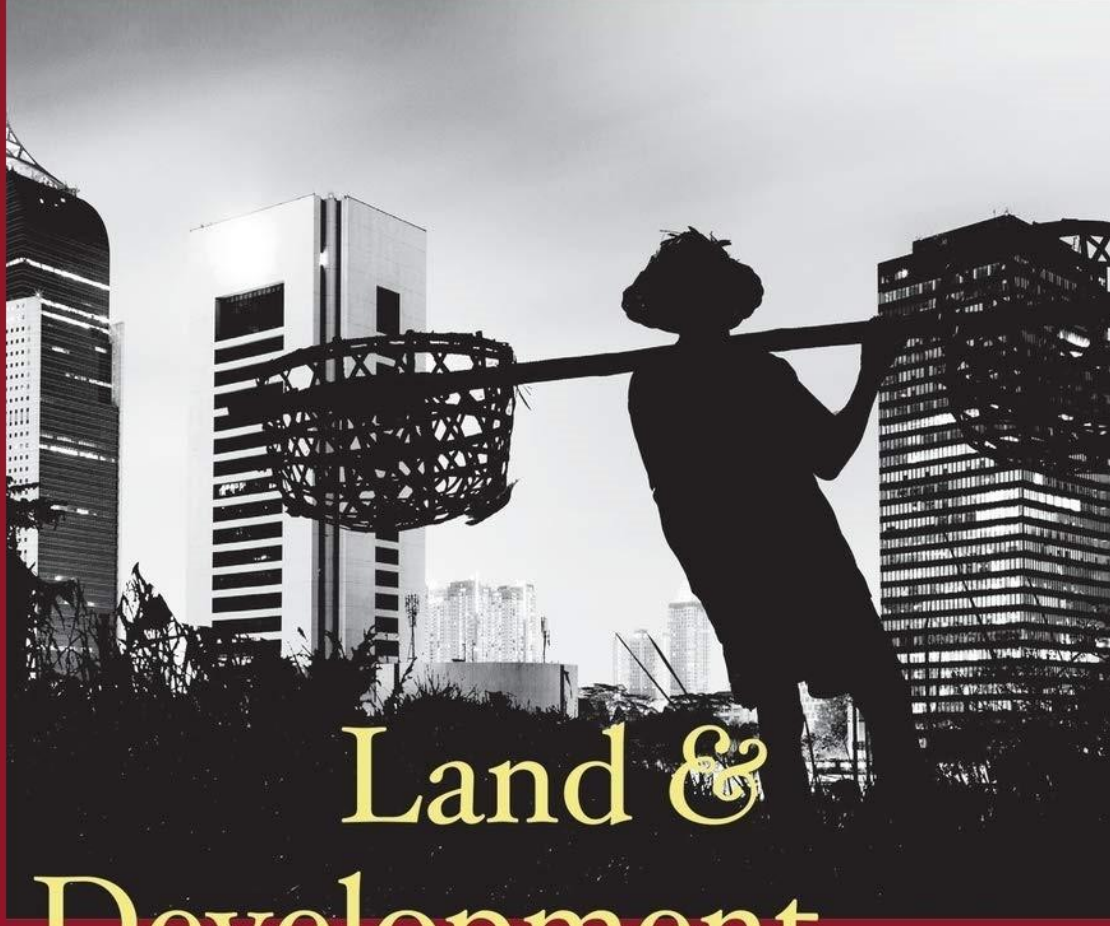

Land & Development in Indonesia

Searching for the People's Sovereignty

EDITED BY

John F. McCarthy
Kathryn Robinson

Indonesia Update Series
College of Asia and the Pacific
The Australian National University

THE AUSTRALIAN NATIONAL UNIVERSITY

Land & Development in Indonesia

The **Indonesia Project**, a leading international centre of research and graduate training on the Indonesian economy and society, is housed in the **Crawford School of Public Policy**'s **Arndt-Corden Department of Economics**. The Crawford School is part of **ANU College of Asia and the Pacific** at **The Australian National University (ANU)**. Established in 1965 in response to profound changes in the Indonesian economic and political landscapes, the Indonesia Project has grown from a small group of Indonesia-focused economists into an interdisciplinary research centre well known and respected across the world. Funded by ANU and the Australian Department of Foreign Affairs and Trade, the Indonesia Project monitors and analyses recent developments in Indonesia; informs the Australian and Indonesian governments, business and the wider community about those developments and about future prospects; stimulates research on the Indonesian economy; and publishes the respected *Bulletin of Indonesian Economic Studies*.

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Indonesia Update Series

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Contributors

Suraya A. Afiff, Head, Center for Anthropological Studies, Department of Anthropology, Faculty of Social and Political Sciences, University of Indonesia, Jakarta

Afrizal, Professor of Sociology, Faculty of Social and Political Sciences, Andalas University, Padang

Aprilia Ambarwati, Researcher, Center for Social Analysis (AKATIGA), Bandung

Patrick Anderson, Policy Advisor, Forest Peoples Programme; and Research Associate, School of Culture, History and Language, ANU College of Asia and the Pacific, Australian National University, Canberra

Adriaan Bedner, Professor of Indonesian Law and Society, Van Vollenhoven Institute for Law, Governance and Development, Leiden University, Leiden

Jamie S. Davidson, Associate Professor, Department of Political Science, National University of Singapore, Singapore

Ho-Ming So Denduangrudee, Associate, Samdhana Institute, Bogor

Chip Fay, Advisor to the Secretary-General of the Indigenous Peoples Alliance of the Archipelago (AMAN), Jakarta

Tommy Firman, Professor of Regional Planning, School of Architecture, Planning, and Policy Development, Bandung Institute of Technology

Patrick Guinness, Associate Professor, School of Archaeology and Anthropology, ANU College of Arts and Social Sciences, Australian National University, Canberra

Ricky Ardian Harahap, Researcher, Center for Social Analysis (AKATIGA), Bandung

Delik Hudalah, Associate Professor of Urban and Regional Planning, School of Architecture, Planning, and Policy Development/Research Center for Environment, Regional Development, and Infrastructure, Bandung Institute of Technology

John F. McCarthy, Associate Professor, Crawford School of Public Policy, ANU College of Asia and the Pacific, Australian National University, Canberra

Jeff Neilson, Senior Lecturer in Geography, School of Geosciences, University of Sydney, Sydney

Nancy Lee Peluso, Henry J. Vaux Distinguished Professor of Forest Policy, Department of Environmental Science, Policy and Management, University of California, Berkeley

Lesley Potter, Honorary Associate Professor, Resources, Environment and Development Group, Crawford School of Public Policy, ANU College of Asia and the Pacific, Australian National University, Canberra

Susanna Price, Honorary Lecturer, ANU College of Asia and the Pacific, Australian National University, Canberra

Yunie Nurhayati Rahmat, Assistant Professor of Regional Planning, Department of Urban and Regional Planning, Bandung Institute of Technology

Kathryn Robinson, Emeritus Professor, School of Culture, History and Language, ANU College of Asia and the Pacific, Australian National University, Canberra

Isono Sadoko, Researcher, Center for Social Analysis (AKATIGA), Bandung

Laksmi Adriani Savitri, Lecturer, Anthropology Department, Gajah Mada University, Yogyakarta

Pierre van der Eng, Associate Professor and Reader, ANU College of Business and Economics, Australian National University, Canberra

Ben White, Emeritus Professor, International Institute of Social Studies, The Hague

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John F. McCarthy and Kathryn Robinson
Canberra, April 2016

Glossary

adat	custom or tradition; customary or traditional law
afdeeling	regency (Dutch colonial period)
aksi sepihak	unilateral action
AMAN	Aliansi Masyarakat Adat Nusantara (Indigenous Peoples Alliance of the Archipelago)
APIMI	Association of Plantation Investors of Malaysia in Indonesia
APP	Asia Pulp and Paper
APRIL	Asia Pacific Resources International Holdings Ltd
AusAID	Australian Agency for International Development
bagi hasil	share tenancy
bagi untung	profit sharing
Bakorstanas	Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional (Coordinating Agency for the Maintenance of National Stability)
Bakosurtanal	Badan Koordinasi Survei dan Pemetaan Nasional (National Coordinating Agency for Survey and Mapping)
BAL	Basic Agrarian Law
Bappenas	Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)
beschikkingsrecht	right to self-determination (Dutch)
BIG	Badan Informasi Geospatial (National Geospatial Information Agency)
BKM	Badan Keswadayaan Masyarakat (Community Self-help Office)
BLU	*badan layanan umum* (public service agency)
BMH	PT Bumi Mekar Hijau
BP3K	Balai Penyuluhan Pertanian, Perikanan dan Kehutanan (Agriculture, Fisheries and Forestry Extension Office)

BPHTB	*bea perolehan hak atas tanah dan bangunan* (land and building transfer tax)
BPN	Badan Pertanahan Nasional (National Land Agency)
BPS	Badan Pusat Statistik (Statistics Indonesia), the central statistics agency
BRI	Bank Rakyat Indonesia (Indonesian People's Bank), a state-owned commercial bank
BRWA	Badan Registrasi Wilayah Adat (Ancestral Domain Registration Agency)
BTI	Barisan Tani Indonesia (Indonesian Peasants Front)
Bulog	Badan Urusan Logistik (the national food logistics agency)
buruh harian lepas	casual day labourer
cadastre	register of extent, value and ownership of land for taxation purposes
camat	subdistrict head
CIFOR	Center for International Forestry Research
CLEP	Commission on the Legal Empowerment of the Poor
controleur	inspector in a regency (Dutch colonial period)
CoW	Contract of Work (Kontrak Karya)
CRS	PT Citra Riau Sarana
CSR	corporate social responsibility
Darul Islam	Abode of Islam; the name of an Islamic-state movement that rebelled against the central government in the 1950s, and remains active in a largely non-violent form
demonstrasi	demonstration
DNPI	Dewan Nasional Perubahan Iklim (National Climate Change Council)
DPR	Dewan Perwakilan Rakyat (People's Representative Council), the lower house of parliament
FAO	Food and Agriculture Organization of the United Nations
FPIC	free, prior and informed consent
FSPI	Federasi Serikat Petani Indonesia (Indonesian Federation of Peasant Unions)
gadai	pawning, mortgage
ganti rugi	(minor) compensation for damages
GAPKI	Gabungan Pengusaha Kelapa Sawit Indonesia (Indonesian Palm Oil Association)
haji	title for someone who has completed the *hajj* pilgrimage to Mecca
hak adat	customary right
hak guna bangunan	see HGB

hak guna usaha	see HGU
hak komunal	communal right
hak menguasai	(state) right of control
hak milik	freehold right
hak pakai	land use right
hak pengelolaan	management right
hak ulayat	communal right, collective right, right to self-determination, right of avail
HGB	*hak guna bangunan* (right to build, right to use buildings)
HGU	*hak guna usaha* (land cultivation right, plantation right, commercial lease right)
hibah	gift, bequest
HKTI	Himpunan Kerukunan Tani Indonesia (Indonesian Farmers Association)
HTI	*hutan tanaman industri* (industrial plantation forest)
HuMa	Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (Association for Community and Ecology Based Law Reform)
hutan adat	customary forest
hutan desa	village forest
hutan hak	forest under rights, private forest
hutan kemasyarakatan	community forest
hutan lindung	protection forest
hutan negara	state forest
hutan tanaman industri	see HTI
hutan tanaman rakyat	community plantation forest
IFC	International Finance Corporation
IFLS	Indonesia Family Life Survey
INPOP	Indonesian Palm Oil Platform
inti	core (of a Nucleus Estate and Smallholder scheme)
IP4T	Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah (List of the Control, Ownership, Use and Utilisation of Land)
IPB	Institut Pertanian Bogor (Bogor Agricultural University)
IPEDA	*iuran pembangunan daerah* (local development contribution)
ISPO	Indonesian Sustainable Palm Oil
IUP	*izin usaha pertambangan* (mining business permit)
izin lokasi	location permit
izin mendririkan bangunan	building permit

izin usaha pengelolaan dan pemanfaatan	business management and utilisation permit
JAPHAMA	Jaringan Pembelaan Hak-Hak Masyarakat Adat (Indigenous Peoples Rights Advocacy Network)
JATAM	Jaringan Advokasi Tambang (Mining Advocacy Network)
JKPP	Jaringan Kerja Pemetaan Partisipatif (Network for Participatory Mapping)
Jokowi	(President) Joko Widodo
kabupaten	district, regency
kampung	village, low-cost urban neighbourhood
Kampung Deret	Kampung in a Row (building program, Jakarta)
Karam Tanah	Koalisi Rakyat Anti Perampasan Tanah Rakyat (Coalition of the People Against Land Grabbing)
kawasan hutan	forest area, forest zone, forest estate
kawasan konservasi	conservation area
kecamatan	subdistrict
kedaulatan pangan	food sovereignty
kedaulatan rakyat	the sovereignty of the people, popular sovereignty
kelurahan	neighbourhood; urban village administrative unit (below *kecamatan*)
Kemitraan	Partnership (in this volume, refers either to a type of nucleus estate–smallholder scheme or to the Partnership for Governance Reform, a non-government organisation)
KKPA	Kredit Koperasi Primer untuk Anggota (Primary Credit Cooperative for Members)
Komnas HAM	Komisi Nasional Hak Asasi Manusia (National Commission for Human Rights)
KPA	Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission)
kraton	court
KSM	Kelompok Swadaya Masyarakat (Community Self-help Group)
KUDETA	Koalisi untuk Demokratisasi Pengelolaan Sumberdaya Alam (Coalition for the Democratisation of Natural Resources)
kuli	coolie, labourer
ladang	unirrigated agricultural field
landraad	regional law court (Dutch colonial period)
LBH	Lembaga Bantuan Hukum (Legal Aid Foundation)
LOI	letter of intent

LPND	Lembaga Pemerintah Non-Departemen (non-ministerial central institution)
maro	half-share (Javanese)
masyarakat adat	customary community, indigenous peoples
masyarakat hukum adat	customary law community
masyarakat terpencil	remote community
masyarakat tertinggal	neglected community
mertelu	two-thirds share (Javanese)
MIFEE	Merauke Integrated Food and Energy Estate
Minangkabau	ethnic group indigenous to the Minangkabau highlands of West Sumatra
MOA	memorandum of agreement
MonSingSel	the area comprising the five subdistricts in the city of Singkawang plus the four surrounding subdistricts (West Kalimantan)
MOU	memorandum of understanding
MP3EI	Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia (Master Plan for the Acceleration and Expansion of Indonesian Economic Development)
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
musrenbang	*musyawarah perencanaan pembangunan* (development planning meeting)
musyarawah	deliberation
NES	Nucleus Estate and Smallholder (scheme)
New Order	the Suharto era, 1965–98
NGO	non-government organisation
orang asli Sorowako	original inhabitants of Sorowako
paduserasi	harmonisation or reconciliation (of spatial plans)
pajak bumi dan bangunan	land and buildings tax
palawija	secondary food crop
PAN	Partai Amanat Nasional (National Mandate Party)
PBB	*pajak bumi dan bangunan* (land and building tax)
PD	Partai Demokrat (Democrat Party)
pembangunan	development
pembaruan agrarian	agrarian renewal
pemekaran	'blossoming', referring to the process of subdivision of government administrative units
perhutanan social	social forestry
Perum Perhutani	State Forestry Corporation
petani gurem	marginal farm household (usually specified as farmers who have access to less than 0.5 hectares of land)

PETI	*pertambangan emas tanpa izin* (gold mining without a permit)
PGRS	Pasukan Gerilya Rakyat Sarawak (Sarawak People's Guerrilla Force)
PHBM	Pengelolaan Hutan Bersama Masyarakat (Community-based Collaborative Forest Management)
PHP1	PT Permata Hijau Pasaman 1
PIR	Perkebunan Inti Rakyat (Nucleus Estate and Smallholder scheme)
PIR-Trans	Perkebunan Inti Rakyat Transmigrasi (Nucleus Estate and Smallholder for Transmigrants)
PKI	Partai Komunis Indonesia (Indonesian Communist Party)
plasma	small plantation plots provided to smallholders; smallholder farmers in a Nucleus Estate and Smallholder scheme
PNPM	Program Nasional Pemberdayaan Masyarakat (National Program for Community Empowerment); an umbrella program for community development
PPKR	Pembangunan Perkebunan Karet Rakyat (People's Rubber Development Scheme)
PPP	public–private partnership
priyayi	the traditional Javanese ruling class (or the outlook of this group)
PRONA	Proyek Operasi Nasional Agraria (National Land Registration Project)
Proyek Administrasi Pertanahan	Land Administration Project
PT ANTAM	Persero Aneka Tambang (a state-owned mining company)
PT Inco	PT International Nickel Indonesia
PT MMM	PT Monterado Mas Mining
PT SIA	PT Sime Indo Agro
PTP	Perseroan Terbatas Perkebunan (state-owned plantation company)
pucuak adat	highest *adat* leader (West Sumatra)
rakyat	the people, the masses
rakyat kecil	insignificant masses
RDTR	*rencana detil tata ruang* (detailed spatial plan)
REDD	Reducing Emissions from Deforestation and Forest Degradation

REDD+	Reducing Emissions from Deforestation and Forest Degradation, extended by sustainable forest management, conservation of forests and enhancement of carbon sinks
reforma agraria	agrarian reform
reformasi	the 'reform' (post-Suharto) era
RK	Rukun Kampung (Harmonious Kampung)
RPKAD	Resimen Para Komando Angkatan Darat (Army Para-Commando Regiment), Special Forces
RSPO	Roundtable on Sustainable Palm Oil
RT	Rukun Tetangga (Harmonious Neighbours)
rukun	harmony
RW	Rukun Warga (Harmonious Citizens)
Sakernas	Survei Angkatan Kerja Nasional (National Labour Force Survey)
Satgas REDD+	REDD+ Taskforce
sawah	irrigated rice field
Scale Up	Sustainable Social Development Partnership (Riau)
sertifikat tanah	land certificate
SKT	*surat keterangan tanah* (letter of land clarification)
SMS	Sertifikasi Massal Swadaya (mass land-certification project)
SPI	Serikat Petani Indonesia (Indonesian Peasant Union)
SPP	Serikat Petani Pasundan (Sundanese Peasant Union)
SPPF	*surat pernyataan penguasaan fisik* (declaration of physical control)
SPPT	*surat pemberitahuan pajak terhutang* (land tax record)
suku terasing	alien tribal community
surat penyerahan tanah	land transfer letter
swadaya	self-help
swadaya murni	independent smallholder
tambang rakyat	people's mining
tanah bengkok	salary land (used to pay village government staff)
tanah kas desa	village treasury land (Javanese)
tanah kemakmuran	welfare land (Javanese)
tanah terlantar	neglected land, abandoned land, unused land
tanah ulayat	communal land
Team IP4T	Tim Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah (Team Listing the Control, Ownership, Use and Utilisation of Land)
TKI	*tenaga kerja Indonesia* (Indonesian migrant worker)
TKW	*tenaga kerja wanita* (woman migrant worker)

Topografische Dienst	Topographical Service (Dutch colonial period)
transmigrasi	government-sponsored internal migration
tuan tanah	lord of the land
UKP4	Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan (President's Delivery Unit for Development Monitoring and Oversight)
wakaf	Islamic foundation
WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment; Friends of the Earth Indonesia)
WBH	Wahana Bumi Hijau
Yayasan Pondok Rakyat	People's Shelter Foundation (Yogyakarta)

Currencies

$	US dollar
Rp	Indonesian rupiah

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Base map CAP 12-215a
CAMBODIA
VIETNAM
THAILAND
South China Sea
PHILIPPINES
PACIFIC OCEAN
MALAYSIA
BRUNEI
Aceh
North Sumatra
SINGAPORE
Riau Is.
Riau
West Sumatra
Jambi
Banka Belitung
South Sumatra
Bengkulu
Lampung
Jakarta
Banten
West Java
Central Java
East Java
Yogyakarta
Bali
West Kalimantan
Central Kalimantan
East Kalimantan
North Kalimantan
Celebes Sea
Gorontalo
North Sulawesi
Central Sulawesi
West Sulawesi
South Kalimantan
South Sulawesi
South East Sulawesi
North Maluku
West Papua
Papua
Maluku
Banda Sea
Java Sea
INDONESIA
West Nusa Tenggara
East Nusa Tenggara
TIMOR LESTE
Arafura Sea
Timor Sea
INDIAN OCEAN
AUSTRALIA
International boundary
Province boundary
Jakarta Province name
0
1000
kilometres
10°N
0°
10°S
100°E
120°E
140°E

1 Land, economic development, social justice and environmental management in Indonesia: the search for the people's sovereignty

John F. McCarthy and Kathryn Robinson

Unresolved land governance questions are at the heart of President Joko Widodo's political agenda. On 14 October 2014, a week before his inauguration, Widodo made a speech touching on several key issues facing Indonesia: reducing greenhouse gas emissions from annual forest fires; resolving a plethora of often violent disputes in the mining and agricultural sectors; and addressing the poverty of farmers eking out an existence on tiny plots of land (Saturi 2014). During his first months in office the president sought to develop infrastructure to promote development and ease land acquisition for investors. Many of these initiatives and policy statements responded to a deeply held desire among Indonesians for an administration that could steward development, pursue social justice and reduce conflict. Such policies depend on addressing land questions, which are central to economic development, social justice and environmental management.

The state needs to recognise and protect the insecure tenurial rights of many Indonesians while finding ways to support forms of development that assist the majority, to deal with proliferating land conflicts, to resolve the property rights question at the heart of Indonesia's unsustainable environmental transition and to provide affordable housing for the poor. In this introductory chapter we discuss these dilemmas in

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relation to wider international debates about natural resource management, land governance and social justice. For instance, what role might land reform play in poverty alleviation? Can the formalisation of property rights provide a significant means of ensuring development? How might initiatives to recognise customary (*adat*) tenure protect indigenous landowners? How can more effective land-tenure governance build on existing localised, vernacular forms of tenure? Can securing tenure in forest areas ensure effective carbon sequestration in forests and address deforestation? Do international governance initiatives, such as those that involve greater corporate social responsibility or that seek to ensure free, prior and informed consent (FPIC) in land transactions, provide an effective means of dealing with land grabs?

We find that land issues are becoming ever more urgent as demand for land, pressure for individual title over land and the increasing commercialisation of land, including the large-scale acquisition of land by corporate entities, continue to generate conflict. While the shift to a more democratic and decentralised political system has led to gradual progress, the reform of Indonesia's land tenure regime remains a perpetual work in progress. This delayed resolution is due to a combination of factors: Indonesia's political economy depends on resource extraction and land-intensive development; powerful interests continue to thwart thoroughgoing reform; the complexity of Indonesian land arrangements confounds one-size-fits-all approaches; and bureaucratic inertia continues to slow new initiatives. Consequently, policy-makers, reformists and civil society activists are still searching for ways to improve land governance and resolve tenure conflicts. The challenge remains of developing and implementing the policy and political frameworks to ensure that the allocation of property rights supports the capacity of ordinary Indonesians to access and control the land, whether it is state or public land, indigenous or community land, rural land or land in urban *kampung*.

This volume considers critical land questions for Indonesia, and the current prospects for dealing with them. What are the contemporary patterns of land administration and land claims? What political interests, agendas and questions are at play? What are the prospects for building a better system for the management of land tenure, and for resolving the conflicts and injustices that bedevil land arrangements? How are the social and environmental consequences of land management systems being managed?

In the first section of this chapter we consider land questions through the lens of Indonesian political discourse. We then discuss the distributional justice questions associated with land in rural and urban contexts. Next, we examine efforts to improve the governance of customary and private freehold land, and to address the tenurial questions affecting

resource management. In the final section we review the search for more appropriate responses to Indonesia's unresolved land dilemmas.

POPULAR SOVEREIGNTY IN LAND AFFAIRS

Within the Indonesian polity, land questions have a particular inflection. The sovereignty of the people (*kedaulatan rakyat*) is a central concept in the Indonesian political tradition (Robinson 2014). The first article of the constitution places the highest power in the hands of the people (article 1(2)). The nationalist authors of the constitution were influenced by ideas from the Enlightenment and the French Revolution. Indeed, the political value of popular sovereignty is a 'dominant conception of political power' in many modern political cultures (Morris 2000: 7) and can have a range of meanings, not least in Indonesia (Bourchier, forthcoming).

The concept of popular sovereignty is used to support three political assertions: first, that the interests of all citizens should be taken into account in determining policy, or in other words that the ends of state policy should be constrained by justice; second, that a government has authority to act only so far as it is authorised by the people through a process of legitimation and consultation, typically through elections; and finally, that the consent of the governed is necessary for legitimate rule (Morris 2000: 15). With respect to land affairs, the concept of popular sovereignty suggests that state land policy should be accountable to the nation's citizens and that it should support or enhance the right of local populations to access, use and control land and to enjoy the benefits of its use and occupation (Borras and Franco 2012).

Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) articulates this principle through the concept of the 'social function' of land, namely that land has a central role in promoting social justice (see Chapter 12 by Ambarwati et al.). It resonates with the constitution by placing the state at the centre of land affairs: article 2(1) of the Basic Agrarian Law establishes the state's right of control (*hak menguasai*) over land, reflecting article 33(3) of the constitution, which states that 'land and water and the wealth they contain are controlled (*dikuasai*) by the state and used for the welfare of the people'. This is a centralised, statist framing of land governance that leaves the state with the responsibility of allocating rights on behalf of the people. The politico-legal discourse of the constitution has created a nexus between the people's sovereignty, popular justice and state management of land and natural resources. Thus, land policy and administration lie at the heart of the ideal of the nation state as the chief actor in providing collective goods, securing justice, redistributing wealth and protecting the environment.

In practice, governments have often misused their land appropriation powers, including by conflating state sovereignty and the people's sovereignty. During the New Order period, the state deployed the rhetoric that it was acting in the name of the national community to support national development, while allocating large areas of land to vested interests close to the regime. In post-Suharto Indonesia, political rhetoric continues to draw on this tradition. In 2010, for instance, the head of the National Land Agency (Badan Pertanahan Nasional, BPN) stated that land policy needed to focus on four main principles: improving the welfare of the people; pursuing distributive justice; fostering a just and peaceful society; and creating social harmony. This was to be achieved by resolving land conflicts and disputes (Winoto 2010). President Widodo has stated that land reform is a pillar of the national development program (see Chapter 11 by Neilson). This commitment points to the unresolved ideological debates and political questions regarding land that have echoed down the decades since the passage of the framework Basic Agrarian Law in 1960.

DISTRIBUTIONAL JUSTICE AND ECONOMIC DEVELOPMENT

Rural land

For many decades, international development analysts have argued that land tenure reform is critical for the success of development policies. They argue that land is central to poverty alleviation and food security, and that achieving more equitable access to land is desirable on efficiency and equity grounds. Research has found that 'even though access to land insures household income only moderately against shocks, it provides almost complete insurance against malnutrition' (Deininger and Binswanger 1999: 256). Especially for rural populations, or urban dwellers with links to the countryside, land provides an essential safety net when no other is available.

While the Indonesian economy has grown rapidly in recent decades, inequality is increasing more quickly in Indonesia than in any other Asia-Pacific country except China. Zhuang, Kanbur and Maligalig (2014: 23) find that the Gini coefficient for income—a statistical measure of inequality—increased by 1.4 per cent per year in Indonesia between 1990 and 2011, from 29.2 to 38.9. Zhuang, Kanbur and Rhee (2014: 37) note that in any society, 'income inequality is likely to intensify if changes in the relative returns or in asset distribution are in favor of those [who are] better-off in society, such as owners of capital and land, [and] skilled labor'.

Analysis of 73 countries between 1960 and 2000 found that countries with more equal land-distribution policies in the 1960s enjoyed higher

economic growth in subsequent decades. There is a close link between distributional justice and economic development: countries with a more equitable distribution of land achieve growth rates two to three times higher than those in which distribution is inequitable (Deininger 2003: 18–19). El-Ghonemy (2003: 40) notes that 'a decrease of one-third in the land distribution inequality index results in a reduction in the poverty level of one-half in about 12–14 years', and adds that 'the same level of poverty reduction may be obtained in 60 years by agriculture growth sustained at an annual average of 3 percent and *without* changing land distribution inequality'. Research in India supports these conclusions, finding that areas under feudal-type, highly unequal landlord systems had persistently worse developmental outcomes after the beginning of the Green Revolution (Banerjee and Iyer 2005). The study found that non-landlord areas applied 43 per cent more fertiliser and achieved 16 per cent higher agricultural yields than landlord areas (pp. 1,201–2). Inequality in land ownership had entrenched a rentier class that harmed long-run productivity simply because landlords had less incentive to invest in more efficient production than owner-cultivators. Other researchers have found that tenant farmers and share croppers are less likely to invest labour in measures to increase productivity (especially permanent improvements in infrastructure such as irrigation and farm roads), as they reaped only a small amount of the benefits (Huizer 2011).

In Indonesia, as in other countries, the pressure on land is increasing with population growth, and the size of the average landholding is becoming smaller (Bachriadi and Wiradi 2013). This problem of land fragmentation is exacerbated by large-scale land acquisitions and the rapid conversion of agricultural land to other uses, including urban residential use—another consequence of population increase and the growth of cities. According to the Ministry of Forestry's own figures, 262 corporations have plantation concessions extending over 9.39 million hectares of the forest estate (*kawasan hutan*), managed under licences that may last for up to 100 years. In addition, 303 corporations have timber exploitation rights over 21.49 million hectares of the forest estate, while 600 oil palm plantation corporations control at least 9.4 million hectares of land under commercial lease rights (*hak guna usaha*, HGU) (Toha and Collier 2015). Critics contend that, together, all oil and gas, oil palm, timber and logging concessions cover 68 per cent of the country (Fogarty 2014). Such figures often include the land banks that private and state companies have accumulated under various licences and set aside for later development (McCarthy, Vel and Afiff 2013).

As a consequence, land distribution in Indonesia has become more unequal. One study calculated that the Gini ratio for the distribution of agricultural landholdings increased from 0.64 in 1993 to 0.71 in 2003

(Rusastra, Lokollo and Friyatno 2007).[1] Another study found that inequality was particularly pronounced in the irrigated farm areas in Java and in the dry-land food crop and horticultural areas in other islands (Sudaryanto, Susilowati and Sumaryanto 2009). Inequality of land distribution in Indonesia is borne out by Peluso (Chapter 2), Ambarwati et al. (Chapter 12) and Potter (Chapter 14) in this volume.

During the decades after World War II, civil society activists and political reformers across East Asia and the wider developing world pursued agrarian reform, promoting access both to land and to the various inputs (knowledge, credit, markets) required to increase productivity and enhance livelihoods (White, Borras and Hall 2014). These reforms aimed to achieve systematic change in the distribution of land, in order to provide equitable access to productive assets and to the economic opportunities that can be derived from the use of productive land. Such reforms can address historical injustices while supporting the structural transformation of economies, at once addressing both livelihood and distributional justice questions.

Several nations in Asia have achieved significant development improvements from changes in tenancy laws, ceilings on landholdings, and compulsory or voluntary acquisition of land for distribution to the poor and landless. For instance, thoroughgoing agrarian reforms in Vietnam established a relatively egalitarian agrarian structure that has led to the revival of family farming and significant improvements in agricultural production (Tuan 2002).

When the Indonesian government passed the Basic Agrarian Law in 1960, land ownership in Java, the central arena of reform at the time, was already fragmented and population density was high. Moreover, while Java contained large areas of state-owned plantation land, it lacked large private latifundia for redistribution, as, for instance, in the Philippines (Lucas and Warren 2013). In the 1960s, the Indonesian Peasants Front (Barisan Tani Indonesia, BTI) began a campaign of unilateral action (*aksi sepihak*) to redistribute land, mainly in Java. BTI was affiliated with the Indonesian Communist Party (Partai Komunis Indonesia, PKI). Its unilateral action campaign led to a high level of class conflict between landlords and tenant farmers, and was one of the critical political dynamics leading to the events of 1965, which resulted in the crushing of PKI and its affiliates. Although this period saw the nationalisation of Dutch estates,

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1 Recent publications derived from the 2013 agricultural census do not refer to a Gini coefficient for the distribution of agricultural landholdings. As Neilson has pointed out in a personal comment, the apparent change in enumeration unit in the 2013 agricultural census makes it less easy to use that dataset in a comparative way. See Chapter 11 by Neilson (footnote 12) for further detail on the enumeration changes.

in many respects Indonesia's agrarian reform movement was stillborn. Key provisions in the Basic Agrarian Law, such as the ceilings on land ownership, have never been implemented (see Chapter 12 by Ambarwati et al.).

Given its association with PKI, the land reform agenda remained taboo for decades. But land affairs retained its symbolic place in Indonesian political discourse, and successive administrations have continued to celebrate National Farmers Day (Hari Tani Nasional) on 24 September each year, the anniversary of the day in 1960 when President Sukarno proclaimed the Basic Agrarian Law. This national day provides a platform to bring issues affecting the nation's farmers to public attention. In 2015, it provided an opportunity for interest groups to focus on the agrarian reforms promised by the Widodo government and on the question of whether the people exercise sovereignty over land affairs (Murdaningsih 2015).

Today, discussions revolve around how to bring the governance of land and natural resources into line with the prevailing collective perception of justice and morality in the local economic sphere. The main questions relate to land reform and tenure security, and how to protect those who are dependent on the land for their livelihoods from land grabs and forced dispossession for agribusiness, forestry and resource extraction projects (see Chapter 6 by Robinson, Chapter 13 by Afrizal and Anderson and Chapter 14 by Potter). The agrarian reform question remains pertinent given that 55 per cent of the population depends in one way or another on agriculture and that 'recent studies indicate that more than one-third of Indonesia's rural population is probably landless and faces multiple associated vulnerabilities' (Srinivas et al. 2015: 3).

A contrary view, expressed by Neilson in Chapter 11, is that the land reform agenda has become less relevant to poverty alleviation in Indonesia. Like other countries across the global south, Indonesia is experiencing an erosion of returns to smallholder farmers, the emergence of new opportunities in the non-farm sector (both local and non-local), environmental degradation, increasing land shortages, and cultural and social changes, all of which affect the opportunities for poverty alleviation in agriculture. As Rigg (2006) argues, the process of 'deagrarianisation', the decline on reliance on agriculture within diversified livelihoods and the increasingly multi-local nature of household livelihoods can be seen as limiting the possibility for land reform to drive poverty alleviation across the global south. Neilson points out that Indonesia may fit this pattern to some degree, given the declining proportion of the population whose livelihoods are derived from farming. Indeed, the 2008 World Development Report on agriculture and development classified Indonesia as one of the 'transforming' countries, where agriculture is no longer a major

source of economic growth, but where poverty remains overwhelmingly rural, accounting for the vast majority of all poor (World Bank 2009). In prescribing policy approaches to poverty alleviation in the transforming countries, the World Bank controversially emphasised increased employment in high-value agriculture, new labour opportunities in the rural non-farm economy and migration, rather than emphasising the development of the traditional agricultural sector or land reform.

Yet, as Ambarwati et al. point out in Chapter 12, agriculture is still the single largest provider of rural incomes and employment in Indonesia. With little state support for poor farmers or protection of their land, socio-economic differentiation continues, increasing the inequality and the vulnerability of poor households. Land also continues to play critical social security and cultural functions (as Neilson notes in Chapter 11). These observations lead Ambarwati et al. to argue that policies should re-engage with supporting smallholder agriculture, discourage speculation and accumulation in land, and find ways to provide users of land with secure tenure.

Critics have noted a trend across the global south towards development policies that aim to facilitate private investment in agriculture by supporting large-scale agribusiness investment. Such policies can exacerbate the problem of an uneven playing field that is already tilted against the smallholder sector. There is therefore a need for policies that explicitly aim to support small-scale producers, 'with related benefits for poverty reduction, social cohesion, and natural resource management' (Vorley, Cotula and Chan 2012: 6). Potter (Chapter 14) argues that, in contrast to Thailand, Indonesia has not developed effective supports for oil palm smallholders who cultivate their own land. Decision-makers continue to facilitate access to cheap land and labour for the booming plantation sector, largely at the expense of villagers whose tenurial rights remain insecure. Despite the boom in smallholder oil palm in many areas, frontier areas continue to see large areas allocated to plantations, with a marked shift in the agrarian structure towards the plantation sector. In parallel fashion, Ambarwati et al. (Chapter 12) observe that a pattern of increasingly speculative land purchases, largely driven by absentee landowners, may be generating the concentration of land ownership across rice-growing districts in Sulawesi and Java.

As an alternative to state-led redistributive land reform, where Indonesia has yet to make significant progress, planners can pursue the resettlement of landless persons on state lands. Given the large area of land subject to state control and the statist framing of land law discussed earlier, the state can choose to allocate rights over large tracts of land for specific uses, as it has in the past under government-sponsored internal migration, or transmigration (*transmigrasi*), programs. This strategy can

be used more generally to satisfy the land, food and income needs of the poor and to make land available for agricultural development and housing construction. Former president Susilo Bambang Yudhoyono set out to distribute 9.25 million hectares, comprising state-controlled land and production forest areas, to the poor (Suara Pembaruan 2007). These efforts made little progress, however, because most of the land was already occupied, zoned for forest uses, or subject to existing concession licences that were not readily rescinded and hence difficult to free up. His administration deemed the political costs of making use of legal provisions to rescind licences over unused land (*tanah terlantar*) too high (Alfiyah 2013).[2]

After receiving support from civil society before his election, President Widodo set new targets for distributing land to internal migrants. Despite continuing criticism of his government's new transmigration program, he is pursuing a plan to allocate an area of 9 million hectares of agricultural land for transmigration (Fahlevi 2015; Jpnn 2015; Safitri et al. 2015). The administration also plans to distribute 12.7 million hectares of land from the forest estate to local and indigenous peoples under a social forestry target (see Chapter 5 by Afiff). Once again, such strategies focus on redistributing forest land—often areas already subject to local uses, or 'underutilised' state land subject to sleeping concessions—rather than pursing a redistributive agenda, as proposed by the advocates of land reform (Gumelar 2015; Saturi 2015).

Urban areas

As opportunities for poverty alleviation in agriculture have declined, large numbers of people have moved to the cities. Like other countries in the region, Indonesia is rapidly urbanising. It experienced the second-highest expansion in the area of urban land in East Asia between 2000 and 2010, amounting to 1,100 square kilometres (World Bank 2015a: 11). Greater Jakarta has swelled to become Asia's fourth-largest megacity. Home to more than 23 million people, the city spills over into adjacent administrative areas to encompass 1,600 square kilometres (Mead 2015). As discussed by Hudalah, Rahmat and Firman (Chapter 8) and Guinness (Chapter 9), many other urban centres are also expanding rapidly across the archipelago.

The chapters in this volume focus on two sets of issues related to land tenure and land security in urban areas. The first concerns the lack of affordable housing and secure tenure for the urban poor. With no

2 These provisions are set out in Government Regulation 11/2010 on the Control and Utilisation of Neglected Land.

affordable options, urban residents seek low-cost housing in areas with substandard infrastructure where they face a high risk of exposure to environmental hazards and an unhealthy physical environment. Hudalah, Rahmat and Firman (Chapter 8) and Guinness (Chapter 9) point to the challenges that state interventions face in planning, managing and governing informal city spaces—the sites of much trading, production and housing in the squatter or slum areas known as *kampung*. They stress the need to bring in informal actors, such as the *kampung* masses themselves, as key stakeholders, along with the state and the commercial sector, to work through the tenurial problems and the poverty faced by the insecure urban poor. Formalisation is not a solution, they suggest, and will not serve the people's sovereignty in urban *kampung*.

A second set of issues, relevant to urban (as well as rural) areas, relates to infrastructure provision and development. Widodo has identified this policy area as a key part of his economic development agenda. He is pursuing a large infrastructure development plan first designed under the government of his predecessor, Yudhoyono. The intent is to integrate the localised economies of the archipelago by developing ports and roads. The success of the plan depends on both government and private investment and on the government being able to assist private investors by resuming the required land.

The Indonesian state retains the right of compulsory land acquisition, with compensation, for the broader public benefit: the 'eminent domain' power. In the past the state has used this prerogative to expropriate property—often to serve private rent-seeking interests, without the use of due process and without paying fair compensation—creating serious hardship for the dispossessed landowners (Deininger 2003; Lucas and Warren 2013; Chapter 6 by Robinson, this volume). The use of the eminent domain power by the Jakarta municipal government in 2015 to clear slums shows the potential for conflict if the state's acquisition powers are not used carefully (Van Voorst and Padawangi 2015). To avoid conflict and economic hardship, planners who wish to acquire land under the eminent domain power need to respect the rights of the original occupants of the land and avoid disrupting their livelihoods while ensuring there is a legitimate claim to public benefit.

As Davidson notes in Chapter 7, the Widodo administration faces considerable obstacles in making use of its eminent domain powers to push through its expansive infrastructure plans. To overcome these difficulties, it must develop the capacity to protect the property rights of investors, reform processes for involuntary land acquisition so that they work effectively, and pay unwilling landowners the full market value of their land as compensation for their lost rights. One new approach involves replacing the New Order practice of offering minor compen-

sation (*ganti rugi*) to those asked to move with more appropriate and satisfactory settlements, under profit-sharing (*bagi untung*) arrangements (Kompas 2011; Reerink 2012).

Infrastructure spending has picked up under Widodo and new projects are being pushed forward. However, in a move worrying environmentalists, the administration has weakened environmental and planning laws in order to speed up the development of industrial zones and infrastructure and 'remove obstacles to business and investment', including in the forestry sector (Sekretariat Kabinet Republik Indonesia 2015; Eco Daily 2016). Yet, 'much of Indonesia's bureaucracy has stubbornly resisted Widodo's calls for speed, transparency and efficiency. Land acquisition laws are tortuous, and everything takes an inordinate amount of time' (Economist 2016).

LAND GOVERNANCE AND LEGAL COMPLEXITY

At the heart of the land issue lies the challenge of providing equitable access to and distribution of the opportunities and resources associated with land. Questions of governance revolve around who gains access to resources, the conditions of access, and how decisions on access and use should be made. Such questions need to be resolved in ways that lead to clear, just and transparent land management policies and to systematic implementation of those policies. These questions pertain to land held under informal customary title and private freehold title—a difference that developed in the colonial period—and we will consider these in turn below.

The colonial legal system distinguished between, on the one hand, categories of registered land subject to Dutch law with secure Western style individual property rights, and, on the other hand, areas under state domain, such as forest, as well as areas subject to customary *adat* property systems. The last category was historically determined.

For centuries, villagers had made modest livelihoods on land regulated by customary principles of access, ownership and inheritance. The colonial dispensation of indirect rule considered these *adat* areas as being subject to a right of avail (*hak ulayat*)—the right of a community to avail itself of the land and the resources on that land, and to control access to and the use of resources within a circumscribed territory according to a community's own institutional arrangements (Sonius 1981: xlvii).

After independence, the new republic wished to resolve the dualistic land system inherited from the Dutch. The 1960 Basic Agrarian Law aimed to provide a single framework for regulating land issues for all Indonesian citizens. It privileged western land concepts, requiring that

vernacular and customary forms of tenure be converted to one of the seven types of land rights recognised by the Basic Agrarian Law. As Bedner notes in Chapter 3, this was a way of favouring formalised private ownership, and various state-provided rights, on what was considered to be state land.[3] Given the state's administrative capacity at the time, this agenda for formalised management of land affairs across a highly diverse and rapidly developing landscape was very ambitious. More than 50 years on, it has not yet been realised.

With respect to customary land, the Basic Agrarian Law took 'the [Minangkabau] *adat* concept of customary territorial rights of avail (*hak ulayat*) and convert[ed] it to a national principle' (Lucas and Warren 2013: 6). The law also allowed the national government to appropriate and allocate land within local territories by invoking a 'national interest' claim. The New Order government then bifurcated the administrative arrangements for land affairs: BPN would apply the Basic Agrarian Law in areas outside the forest estate, and the Ministry of Forestry would apply forestry law within the areas zoned as forest, which it had mapped to extend over around 70 per cent of the nation. The principle of the state right of control (*hak menguasai*) allowed the forestry ministry to classify many areas that were subject to local customary uses as 'free state domain'—land unencumbered by rights, and that the state could freely dispose of. Hence, many customary uses of land went unrecognised under formal state law. Effectively, this allowed the state to allocate concessions or other development licences over land that lacked formally recognised rights, but which were considered to be 'owned' under customary systems.

In countries with complex legal histories, parallel sets of norms, rules and laws can govern land tenure, sometimes with several decision-making structures pertaining to a particular land issue, each with its own sources of legitimacy and employing its own decision-making processes. In consequence, tenure rules in such countries tend to be flexible, multifaceted and fluid (Schuck 1992). This is the case in Indonesia, which has a pluralist system of land law stretching back to the colonial period. Indeed, as Bedner notes in Chapter 3, legal complexity has become even more central to Indonesian land affairs. The problem, he argues, is not the plurality of land institutions per se—inherent in a complex country such as Indonesia—but rather the opportunities for abuse in a context of bureaucratic competition, a weak judiciary and wide disparities in power.

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3 Article 28H(4) of the1945 Constitution states that 'every person shall have the right to own private property, and such property may not be appropriated arbitrarily by anyone'.

The *reformasi* period around the turn of the millennium can be seen as a critical political turning point. The transition from the Suharto regime led to a new openness—the expansion of civil liberties, the freeing up of the media, the regular holding of freely contested, multi-party elections and the decentralisation of authority, including in resource governance. In this more open political environment, a proliferation of land disputes led to a crisis of legitimacy for Indonesia's centralised land governance system as newly empowered actors attempted to reclaim land rights and to demand more just benefit- and land-sharing arrangements (Warren and McCarthy 2009).

The idea of *adat* rights is stronger in the discourse of social movements than in law, given that the state has not yet enacted effective legal instruments to provide full recognition or protection of those rights. Claims based on *adat* were given a boost by the twin forces of democratisation and decentralisation, which popularised the rhetoric of empowerment (*pemberdayaan*) and promoted localism (see Chapter 6 by Robinson). The prospects for legal recognition of *adat* rights also improved with the formation of the Constitutional Court, which allows for the establishment of judicial doctrines that apply beyond the individual cases considered by other courts (see Chapter 3 by Bedner).

The *reformasi* process has in some cases enabled the dispossessed to push back, particularly where the free media have aired instances of injustice, where the Constitutional Court has issued rulings that support their claims or where the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) has investigated and charged district heads for corrupt transactions in regard to land concessions. Yet, in many other respects the political economy and the oligarchical structure associated with the old regime remain intact (Robison and Hadiz 2004). Many of those who had accumulated licences and permits during the New Order were allowed to retain them after the transition (McCarthy and Moeliono 2012). This has posed problems for the legitimacy of a property rights regime that rewards those who have obtained land by corrupt practices and allows land to become concentrated in the hands of the few. In remote rural areas, powerful businesspeople worked with local officials empowered by the decentralisation process to dominate key resource sectors and land affairs, at least until the recentralisation of many areas of authority in 2014. Corporate developers have continued to enclose large areas of land for plantations and mining concessions (see Chapter 2 by Peluso, Chapter 6 by Robinson and Chapter 15 by Savitri and Price). Political reform has coexisted with continuity or even extension of the concession system associated with the New Order, leading to increased rates of deforestation and forest conversion, and to escalating levels of conflict over resources.

Moreover, despite the advocacy of social movements, the Ministry of Forestry has managed to retain its administrative authority over the forest estate, a vast area encompassing some 133 million hectares (Wibowo 2010). According to the ministry's own figures, an estimated 48 million people live in 41,000 villages located in or close to areas that are considered part of the forest estate (Santoso 2011). For the most part, these villagers have weak property rights and precarious land tenure. Despite the promise of people's empowerment in the reform era, intractable land disputes continue across Indonesia, particularly in these areas. The Ministry of Forestry has estimated that 16.8 million hectares of land (an area equivalent to around 40 per cent of the Netherlands) are subject to conflict, with active disputes affecting over 1.2 million hectares (Santoso 2011).

Indigeneity: securing customary rights?

Land policy typically aims to provide tenure security, in order to ensure that people are not dispossessed and that the property rights of owners and users of the land are protected. In Indonesia, this raises the question of how to secure customary rights over land. Following the Convention concerning Indigenous and Tribal Peoples of the International Labour Organization (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007), international advocates have developed a body of international law and jurisprudence that recognises the rights of indigenous peoples. As described by Bedner (Chapter 3), Fay and Denduangrudee (Chapter 4), Afiff (Chapter 5) and Robinson (Chapter 6), NGOs and social movements in Indonesia have taken up this rhetoric in order to secure the customary rights of indigenous and local peoples across the archipelago.

The Indonesian state has taken several steps to resolve the issue of *adat* land rights (see Chapter 3 by Bedner, Chapter 4 by Fay and Denduangrudee and Chapter 5 by Afiff). In 2001, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR) passed a decree calling for the revision of agrarian laws implicated in 'poverty, conflict and social injustice among the people and the destruction of natural resources' (Decree IX/MPR/2001). In 2013, Indonesia had what appeared to be its 'Mabo moment' when the Constitutional Court ruled that areas within the forest estate that were subject to *adat* claims could be recognised as private forest (Constitutional Court Decision 35/PUU-X/2012).[4] Although some government departments have taken steps to comply with the MPR

4 The Mabo decision (1992) was a hallmark moment in Australian recognition of customary rights. It has paved the way for legislation that follows the model of recognising a bundle of rights over a parcel of land (see below).

decree and the Constitutional Court ruling, the state has not developed a clear process for recognising *adat* claims. The Widodo administration appears committed to recognising the land rights of indigenous peoples, but the national parliament (Dewan Perwakilan Rakyat, DPR) is yet to legislate change. The parliament has placed a land bill on the list of legislation to be discussed during Widodo's first term, but there is little momentum for a draft bill that would recognise indigenous rights (see Chapter 4 by Fay and Denduangrudee). The lack of support among political parties for the *adat* reform agenda continues to disappoint those advocating for *adat* rights (Prabowo 2016).

Critics of the structuring of land rights around *adat* concepts suggest that legal concepts of *adat* inherited from the past remain essentialist, relying on a 'customary' or 'traditional' framing of rights according to a nativist discourse. For them, *adat* remains paradoxical, protean and contradictory (Davidson and Henley 2007). The attempt to use *adat* as a means to address historical injustices raises questions about identity and equity, with policy-makers and legislators unwilling to differentiate between Indonesian citizens as a broad category and Indonesians who make claims to *adat* rights based on their indigenous identity (see Chapter 4 by Fay and Denduangrudee). How should the state resolve the difference between citizen-based principles of justice governing urban and rural land management (where 'citizen' is an abstract legal category) and *adat*-based principles of justice (where the consensus from the *adat* movement is that 'indigenous' identity is a form of self-identification)? How should rights be allocated within particular localities, in an archipelago where populations have been so mobile over time? How can the state ensure justice both for Indonesian citizens in general and for the subsection of people claiming also an indigenous identity?

Over the last few decades many countries have established land tenure regimes that attempt to deal with similar questions of indigenous rights. A report by the Washington–based Rights and Resources Initiative states, however, that in most of these countries indigenous people have restricted rights under 'circumscribed and contingent rights regimes' that are characterised by a 'lack of clarity' (RRI 2012: 8). The quest in Indonesia to address historical injustices by formally recognising communal rights (*hak ulayat*) continues to face similar challenges. As Bedner notes in Chapter 3, the anti-*adat* forces remain strong, and the movement advocating for indigenous rights has yet to achieve significant changes to land tenure arrangements to recognise *adat* rights.

Providing secure private property rights

A dominant approach to land tenure security has involved formalising boundaries and conditions of access and ownership, and securing indi-

vidual ownership through land registration and titling. Formalisation in this sense involves the state recognising a user's property rights by creating a legal category, titling a piece of land to an individual and registering the title. As described by Van der Eng (Chapter 10), this means creating a public ownership record, typically in a cadastral database. For the state, formalisation has the advantages of increasing the legibility of land relations for state planners, providing greater control over the conditions under which land is held and providing opportunities for expanded revenues from land taxation. It also has advantages for the right holders: landowners can obtain a more secure hold over their property, sell their land more readily and use it as collateral to obtain loans (Hall, Hirsch and Li 2011; Bruce 2012). On the other hand, researchers have shown that, in practice, formalisation processes tend to exclude less powerful groups, such as women or indigenous groups (Hall, Hirsch and Li 2011; Lucas and Warren 2013).

Nonetheless, a powerful policy narrative has emerged that suggests that the provision of full private-property rights is central to development. In an influential book, De Soto (2000) argued that the provision of formal property rights would allow the poor to use their land assets more effectively, providing a pathway out of poverty. The formalisation of property rights would provide incentives for investment and enhance economic growth, by enabling landowners to access credit and by allowing the transfer of productive lands to those who could use them most efficiently.

In contrast to Thailand and other countries in the Mekong region (Hall, Hirsch and Li 2011), Indonesia has pursued land titling with limited success. The Ministry of Agrarian Affairs and Spatial Planning/BPN has administrative responsibility for all areas outside the forest estate, that is, for approximately 30 per cent of Indonesia's land area. This area contains around 85.8 million land parcels, of which 41 million have not yet been registered (Toha and Collier 2015). Indeed, as Van der Eng notes in Chapter 10, colonial and post-colonial governments have sought to resolve the issue of land registration—without success—for the past 200 years. Shortcomings in administrative processes and structures and the high cost of the required administrative effort continue to hamper progress.

The World Bank has supported Indonesia's land-titling agenda in the past, for instance, through the Land Management and Policy Development Project during the first decade of the new century. While 1.7 million titles were issued to landowners as a result of this project, the World Bank states emphatically that 'the objective of *increasing the efficiency and transparency of land registration* was not achieved' (World Bank 2014: x). The key problems were that the institutions bearing on land rights were

poorly defined and not transparently administered, the costs of registration were too high and there was inadequate coordination between the decentralised state agencies responsible for surveying, mapping and zoning (p. x). Crucially, the state has yet to develop a way to manage the range of complicated customary and vernacular systems of land ownership that exist across Indonesia. Hence, despite efforts to speed up land certification, including an increased budget for land certification programs, Van der Eng (Chapter 10) concludes that the complexity of the existing legal system for land tenure ensures that the coverage of Indonesia's cadastral system remains far from comprehensive.

Given this history, to what degree and how rigorously should Indonesia pursue formalisation? Guinness (Chapter 9) discusses an unsuccessful rights formalisation initiative in Indonesia that followed the De Soto model—the Commission on the Legal Empowerment of the Poor (CLEP)—agreeing with critics that the De Soto argument is too simple, that it neglects existing land management and land-use practices, and that it overestimates the capacity of the state to develop effective land governance mechanisms (Otto and Hoekema 2012). A body of literature has emerged demonstrating the mixed outcomes associated with attempts to implement land registration programs or to impose market-led reforms (Sikor and Muller 2009; Sjaastad and Cousins 2009; Bruce 2012). Other studies have been critical of the assumption that formal property titles and a free market for land will necessarily work to the benefit of the poor, in conditions of great economic and political inequality, and without the support of effective courts and land governance institutions. Von Benda-Beckmann describes this as mere 'wishful thinking'. Given that property rights are a highly political issue, politicians may be inclined to downplay the distributional questions at the heart of the land tenure question (Von Benda-Beckmann 2003: 191).

There seems to be an emerging consensus in development circles that property questions need to be understood in all their complexity: one-dimensional political, economic or legal models will not suffice (Von Benda-Beckmann, Von Benda-Beckmann and Wiber 2006). Initiatives to reform property rights, including attempts to secure tenurial rights, do best when they build on existing tenure arrangements, and adopt a participatory and responsive approach based on careful assessment of the local context (Otto and Hoekema 2012). In other words, rather than pursuing ambitious, top-down, one-size-fits-all land-titling programs, Indonesian policy-makers could opt to build on existing, semi-formal processes for documenting and recording rights to land—such as the letters issued by local governments confirming the payment of land tax, or the letters acknowledging land rights (*surat keterangan tanah*, SKT) issued by village and subdistrict officials. As long as mechanisms were put in

place to ensure transparency and accountability, such an approach could lead to more secure forms of tenure, and provide a way of dealing more effectively with the great variety of de facto systems of land tenure in both urban and rural areas. It would also avoid overambitious efforts that, by inadvertently changing the underlying content and status of land rights, generate new disputes and new forms of uncertainty (Fitzpatrick 2007).

Environmental challenges

A large body of research asserts that clear land and property rights are critical to achieving desirable environmental outcomes (see, for example, Heltberg 2002; Brown, Brown and Brown 2016). Questions of tenure remain central to the global agenda to use forests to sequester carbon—the scheme known as Reducing Emissions from Deforestation and Forest Degradation (REDD+). REDD+ projects require clarity in regard to tenurial rights in order to compensate those who have agreed to preserve carbon stocks in the forests. The projects thereby aim to hold right holders responsible for meeting their obligations. The implementation of REDD+ projects inevitably involves prohibiting certain uses of forest resources, and can result in the exclusion of some groups from the forests. Projects therefore need to be designed in such a way as to ensure that access and management rights are respected, livelihoods enhanced and benefits allocated justly (Sunderlin, Larson and Duchelle 2014). Hence, international agencies and donors have felt justified in using REDD+ funds to support tenure reform in state-controlled forest zones (Barr and Sayer 2012).

Tenure and property rights reform is essential to address the rapid liquidation of Indonesia's forest resources. Indonesia has now surpassed Brazil as the nation with the highest annual primary forest loss (Margono et al. 2014), much of it due to the planned conversion of forest to industrial timber plantations, oil palm plantations and mining. By 2011, the Ministry of Forestry had classified 78 million hectares of land (26.7 million hectares of non-forest land and 51 million hectares of forest land) as degraded (Srinivas et al. 2015: 5). Much of the degradation was due to logging, forest fires and unregulated clearance under ambiguous and poorly implemented governance arrangements. The commodity boom of the last decade has drawn investment into mining, oil palm and timber, increasing the value of land and creating incentives for investors to secure vast land banks through various means (McCarthy, Vel and Afiff 2013). Decentralisation has contributed to this process, by giving the districts the power to raise official and unofficial revenues from the exploitation of natural resources. In response to the perception that district governments had misused their authority over natural resources, in

2014 the government enacted a new law (Law 23/2014 on Regional Government) that reduced the authority of district governments over forestry, marine and extractive affairs, reimposed the authority of provincial governments over exploitation permits and allowed for the removal of elected regional executives who had violated government regulations.

The Yudhoyono government committed Indonesia to reduce its greenhouse gas emissions by 26–41 per cent by 2020. A major component of this plan was to develop a REDD+ program to reduce emissions from deforestation and forest degradation. Given the lack of clarity over property rights and the insecure nature of tenure in the forest zone, Indonesia needed to overhaul its legal framework in order to be able to implement the REDD+ program effectively (Wright 2012). Afiff argues in Chapter 5 that the government commitment to REDD+ provided an opportunity for civil society actors to push for the recognition of indigenous rights, together with new measures to improve the management of Indonesia's forests. The Yudhoyono administration's most significant initiatives were the moratorium on the issuance of new licences in primary forest and peatland and the One Map project (both of which have continued under Widodo). The latter involves the development of a single map to resolve the contradictory mapping and data management systems that have led to overlapping timber, mining and oil palm concessions and to associated conflicts over customary rights (Chatterjee, Ho and Brummitt 2015). The One Map and moratorium initiatives provide opportunities to improve land-use planning and permitting processes, and possibly to move towards a system of rights-based spatial planning.

Afiff describes how reformers have used the REDD+ program to push for significant policy reforms, driving changes that have increased transparency of natural resource decision-making and freedom of information, and that have curtailed the granting of permits in peatland areas. To date, however, many of the REDD+ projects have had only limited effect in actually reducing emissions. The key constraints have included a lack of commitment from local government, limited state capacity to enforce REDD+ policies and a national political economy that is structured around the expansion of resource-dependent industries (Luttrell et al. 2014). Land tenure and land rights lie at the heart of the failure.

The central government is attempting to improve management of the resources sector, including by revising the procedure for issuing plantation and mining permits (see Chapter 3 by Bedner, Chapter 4 by Fay and Denduangrudee, Chapter 5 by Afiff and Chapter 6 by Robinson). This has become increasingly urgent since the devastating 2015 forest fires, which produced more carbon emissions than the whole US economy on 38 of 56 days leading up to October 26 (Harris et al. 2015), negatively impacted the health of more than 40 million people within Indonesia (Daulay 2015)

and cost the economy more than $16 billion—more than double the cost of reconstructing Aceh after the 2004 tsunami—in the space of just five months (World Bank 2015b). Various studies have linked Indonesia's forest fires to the land tenure problem haunting resource management (Suyanto 2007; Velde 2015). To address the underlying causes of Indonesia's forestry crisis, Afiff concludes that fundamental reform of the land and forest tenurial system is essential.

SEARCHING FOR APPROPRIATE RESPONSES

Whichever pathway Indonesia's policy-makers follow in attempting to reform the country's land tenure system, the underlying issue of justice needs to be addressed. This is particularly urgent given two developments.

First, land grabbing, defined as 'the large-scale acquisition of land or land-related rights and resources by corporate entities' (White et al. 2012: 619), is occurring in contemporary Indonesia, as elsewhere in the world. The demands of domestic and international business interests tend to be supported by state interventions to promote investment in agriculture, mining, forestry and other developments. Case studies suggest that all too often such developments forcibly displace large numbers of people, ignore the proper legal procedures for acquiring land and fail to fulfil the promise of employment creation and infrastructure provision for local people (Borras et al. 2011; Chapter 6 by Robinson). This is certainly the case in Indonesia, where tenurial arrangements are yet to provide effective protection for millions of people.

Second, with population growth, the demand for land, the pressure for individual title over land and the commercialisation of land are increasing. In many places customary institutions continue to adapt to such pressures in their own ways (Warren 2005; McCarthy 2006; Von Benda-Beckmann and Von Benda-Beckmann 2014). In other areas, however, customary systems have lost their stable and cohesive character and have struggled to manage external threats.

The pressures on customary and village-level institutions have emerged from several quarters. An early source of pressure was the withdrawal of state recognition for customary institutions under the New Order's Village Law (Law 5/1979). Another has been the informal and semi-formal land markets that have developed in many parts of Indonesia to facilitate the sale of individual titles (Fitzpatrick 2007). On the oil palm frontier, the role of local landowners and *adat* institutions involved in negotiating land- and benefit-sharing arrangements may be reduced to bargaining over the benefits offered by developers under licences that

have already been issued by higher authorities. In some cases, companies have even manipulated *adat* to shape the conduct of smallholders without enhancing community rights or livelihoods (Acciaioli and Dewi 2016). The question of indigenous land rights is also complicated by the reality that, in many areas, migrants have moved into the historical homelands of *adat* communities, seeking land and land-based livelihoods. Such dynamics can leave the tenurial rights of local landowners poorly protected from external occupiers or buyers, often working with powerful internal actors. Moreover, during the New Order, the state ideology of development (*pembangunan*) was designed to encourage migrants to move to frontier areas and make the land more 'productive'—not to protect the rights of the original occupants.

The post-Suharto reform movement has generated advances in the local domain. For instance, mining licences now need to be declared 'clean and clear' of conflict and are increasingly subject to administrative oversight (see Chapter 6 by Robinson). Decentralisation and global demands for greater corporate social responsibility have persuaded investors to become more sensitive in their relations with local people. Local entrepreneurs and communities have been emboldened to become more involved in resource extraction projects, even as outsiders have been forced to share more of the benefits with local claimants in return for access to sites. On the other hand, all too often local governments seem to be more interested in collecting revenue and imposing illegal levies than in implementing and enforcing regulations or protecting local and indigenous land rights (see Chapter 3 by Bedner and Chapter 4 by Fay and Denduangrudee). Democracy and decentralisation have not provided the solution to the country's messy land tenure conflicts; have not helped establish tenurial security for the majority of local landowners; and have not enhanced the capacity of rural people to derive better livelihoods from local land assets.

Based on consideration of issues relating to the exercise of power, some argue that measures beyond recognising customary rights or reviving customary institutions are required in order to empower local and indigenous peoples and protect land rights in the local domain. A localist approach to community-based tenure security may be insufficient on its own, and protection requires more than the recognition of *adat* rights in law (Otto and Hoekema 2012).

In the case of Papua, the recognition of communal rights (*hak ulayat*) under Law 21/2001 on Special Autonomy for Papua (the Special Autonomy Law) has not had the desired effect of protecting the tenurial rights of indigenous Papuan communities (see Chapter 15 by Savitri and Price). The central problem is that the law provides mechanisms for releasing community land rights without providing effective safeguards to secure

the incomes, livelihoods and well-being of the landowners. Thus, the situation in Papua also raises the question of whether recognition of *adat* rights is sufficient to guarantee tenurial and livelihood security. During asymmetric negotiations of land leases, indigenous Papuans are pressured to consent to the release of their land; they remain exposed to expropriation, and the existing mechanisms do not ensure proper and sufficient compensation. Savitri and Price suggest a number of innovations that could ensure better protection of rights, including a shift to distributive rather than displacing projects, better regulation and control of private developers, and more effective safeguards for landowners, including a genuine right to exercise free, prior and informed consent (FPIC).

Beyond questions of customary rights, the challenge for Indonesian reformers is to develop the policy and political frameworks required to control the allocation of land—particularly for resource and infrastructure projects—in regions where this would result in the enclosure or alienation of areas that are important to sustain local livelihoods. This necessarily requires a shift in power to support the capacity of the poor to access and control land that is claimed by the state and that may be allocated to concessionaires or developers—whether it is state or public land, indigenous or community land, rural land or land in urban *kampung*.

Bedner (Chapter 3) and Fay and Denduangrudee (Chapter 4) suggest that a possible way forward, in some cases, may be to rethink state understandings of property rights. Rather than building on notions of exclusive private property rights in accordance with the liberal tradition that poses a set of binary oppositions (communal versus individual title; state versus private property; customary versus formalised rights), legislators might work with the notion of property as a bundle of rights, where ownership rights dissolve into different bundles of rights over a particular space. For instance, under conditions of shared duties and obligations, the state might retain overall oversight over a rich ecological area, while local right holders—whether they have an *adat* identity or not—might control the use of the land and retain the right to benefit from it, while ensuring careful and responsible management.

In Chapter 2, Peluso reminds us of the dynamic nature of land occupation, land use and the designation of rights as populations grow, move and seek new livelihoods. Land institutions evolve constantly, often taking on vernacular forms that do not fit the simplifying models set out by Van Vollenhoven and the *adatrecht* scholars of colonial days, the narratives of advocates of *adat* rights or the tenurial concepts found in state law. In such circumstances, as much of the property rights and natural resource literature now suggests, it is necessary to work at different scales and

find ways of nesting local vernacular forms within wider governance arrangements. Today, 'kinship', 'traditional' and 'community' systems of authority sit within district and provincial institutions of government, subject to national law, which defines the rights of citizens.

Dealing with complexity into the future may entail building on localised, vernacular or customary arrangements that exist in some hybrid relationship with other jurisdictions, rather than returning to a prescription that involves the 'reinvention of tradition'. This is not just an issue of individual versus collective rights; it also involves accommodating the complex bundle of rights and claims of access that people seek to have recognised or protected, as well as the political economy that shapes people's ability to make use of those rights. Following examples from elsewhere (Fitzpatrick 2005; Bruce 2012), Indonesian policy-makers could consider recognising a collective or corporate actor (for example, a village governance structure or a wider customary structure—with or without an *adat* identity) to manage and control land, subject to conditions to ensure that land affairs were managed in a transparent and accountable fashion (Von Benda-Beckmann and Von Benda-Beckmann 2013). The village and subdistrict institutions that already undertake much of the daily management of land affairs are obvious candidates. But whatever solution is chosen, it is unlikely that one size would fit all.

A recent initiative by legislators to develop communal or collective rights (*hak komunal*) may represent a step in this direction. As discussed by Bedner (Chapter 3) and Fay and Denduangrudee (Chapter 4), Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 allows communities that have subsisted on land for a substantial period (10 years or more)—whether tied to an *adat* community or not—to register a communal right. A communal right can be recognised both within the forest zone and within plantation areas. However, as Fay and Denduangrudee observe, it remains to be seen how the recognition of communal rights under this initiative can be reconciled with the commercial lease rights (HGU) or forest concession and plantation permits already awarded within a particular area.

The multi-layered nature of land management within large and complex systems requires that multiple organisations are involved in land management under some coordinating mechanism (Cleaver 2012; Merrey and Cook 2012). Such solutions would need to allow for the interests and capacities of existing local land management institutions, with their own notions of justice and their own rules for allocating land. But they would also entail a role for the state in managing the problems of community, class and group differentiation associated with customary forms of control. At the same time, the state should be held accountable for the justice of its land policies. In this way, policy could build on 'the

strengths of both state-centric and community-orientated perspectives', and in that way address the key weaknesses of each (Borras and Franco 2012: 7).

Questions of tenure are increasingly influenced by international discourses and legal developments. Local actors have discovered that they can make use of international rules that go beyond national regulations to protect landowners from the acquisition of their land by investors. For example, palm oil corporations that have subscribed to the Roundtable on Sustainable Palm Oil (RSPO) are obliged to obtain the free, prior and informed consent (FPIC) of communities that will be affected by their projects, to respect community rights to land and to resolve outstanding conflicts.

Afrizal and Anderson (Chapter 13) describe the attempts of several communities in Sumatra to make use of these voluntary international standards to address injustices arising from the rapid expansion of oil palm, pulp and paper concessions. Such concessions already cover 15 million hectares of land in Indonesia and there are plans to triple the area under licence. Afrizal and Anderson conclude that the norms set out in private regulatory systems such as the RSPO provide a point of leverage for communities and social movements. McCarthy (2012) also found that transnational advocacy networks were more likely to achieve a successful resolution of disputes with palm oil and pulp and paper companies if they used international multi-stakeholder forums and private governance systems to apply pressure to suppliers and buyers in the international arena. Similar local–national–global alliances have been effective in highlighting unfair dealings between mining companies and local communities, using platforms such as social media and shareholder meetings to highlight injustices (see Chapter 6 by Robinson).

However, Afrizal and Anderson caution that the likelihood of achieving a desirable outcome typically depends on the pressure that a community–NGO alliance can bring to bear in a particular case, and that this is often limited by a lack of support and resources. It remains to be seen whether private regulatory systems such as the RSPO can develop the kind of structural power required to change corporate practices, whether public pressure from social movements can significantly affect outcomes and whether the implementation of state regulations can change conduct in upstream production areas (McCarthy, Gillespie and Zen 2012). Nonetheless, such efforts provide opportunities for social learning. Afrizal and Anderson argue that, when combined with recent legal reforms that strengthen communal rights to land (such as Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015), the influence exerted by these private regulatory bodies should gradually bring Indonesian resource companies closer to meeting international standards.

CONCLUDING THOUGHTS

The idea of the people's sovereignty asserts human equality and sets conditions for acceptable forms of political authority: that those who govern must obtain consent from the governed and govern in their interests (Morris 2000). This powerful concept remains at the centre of Indonesia's political tradition. It is a rhetorical resource that activists can mobilise to remind their fellow citizens of the need to address festering land issues.

Rhetoric aims to inform, persuade and motivate people and always works at a distance from reality. Nation states rarely conform to the aspirations set out in their founding documents; political authority is never derived totally from the people in a bottom-up fashion (Morris 2000). In a country as pluralist and diverse as archipelagic Indonesia, political authority is heterogeneous, and in some remote parts of Indonesia, the state may be all but absent, leaving governance and dispute resolution in the hands of a local village-level authority (Li 2014). All too often, people have to get by without the state determining, once and for all, in the name of the people, how land affairs are governed. The result can be unresolved justice, environmental and social issues.

Several chapters in this book discuss the ongoing pursuit of appropriate initiatives and policy instruments to resolve some of the problems bedevilling land arrangements. Several authors point to signs of progress: the One Map policy; forestry reforms; discussion of proper compensation (including the idea of *bagi untung*) in the cities; moves to recognise communal rights (*hak komunal*); and Widodo's social forestry initiatives. However, the gap between rhetoric and reality has a long history, and implementation of new initiatives on the ground—where high rhetoric and legislated changes are translated into reality—remains difficult, not least because the political economy of land limits the possibilities for rapid progress. In the political economy of Indonesia, development and economic growth are tied to an expansion of the resource sectors, especially industrial-scale timber, oil palm and mining ventures (Thorburn and Kull 2015; Cramb and McCarthy 2016). The planned massive infrastructure development to facilitate the exploitation of natural resources, coupled with rapid economic growth and urbanisation, is a challenge to the practical expression of the people's sovereignty and the people's democratic rights in regard to land, for Indonesia's diverse citizenry.

The weight of history and the positive experiences of other countries show that it is possible to achieve progress by pursuing existing pathways as well as new initiatives. The search continues for appropriate ways to achieve the aspirations set out in the Indonesian constitution and to realise the promise of democratic reform in the critical area of land administration and tenurial rights.

REFERENCES

Acciaioli, G. and O. Dewi (2016) 'Opposition to oil palm plantations in Kalimantan: divergent strategies, convergent outcomes', in R.A. Cramb and J.F. McCarthy (eds) *The Oil Palm Complex: Smallholders, Agribusiness and the State in Indonesia and Malaysia*, NUS Press, Singapore: 327–53.

Alfiyah, N. (2013) 'Ribuan hektare tanah telantar akan dibagikan' [Thousands of hectares of abandoned land will be distributed], *Tempo*, 31 December. Available at http://nasional.tempo.co/read/news/2013/12/31/173541146/ribuan-hektare-tanah-telantar-akan-dibagikan

Bachriadi, D. and G. Wiradi (2013) 'Land concentration and land reform in Indonesia: interpreting agricultural census data 1963–2003', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia,* Ohio University Press, Athens, OH: 42–92.

Banerjee, A. and L. Iyer (2005) 'History, institutions, and economic performance: the legacy of colonial land tenure systems in India', *American Economic Review*, 95(4): 1,190–213.

Barr, C.M. and J.A. Sayer (2012) 'The political economy of reforestation and forest restoration in Asia–Pacific: critical issues for REDD+', *Biological Conservation*, 154: 9–19.

Borras, S.M. and J.C. Franco (2012) 'A "land sovereignty" alternative? Towards a peoples' counter-enclosure', discussion paper, TNI Agrarian Justice Programme, Amsterdam, July. Available at https://www.tni.org/files/a_land_sovereignty_alternative_.pdf

Borras, S.M., R. Hall, I. Scoones, B. White and W. Wolford (2011) 'Towards a better understanding of global land grabbing: an editorial introduction', *Journal of Peasant Studies*, 38(2): 209–16.

Bourchier, D. (forthcoming) *Illiberal Democracy in Indonesia: The Ideology of the Family State*, Routledge, London and New York, NY.

Brown, D.S., J.C. Brown and C. Brown (2016) 'Land occupations and deforestation in the Brazilian Amazon', *Land Use Policy*, 54: 331–8.

Bruce, J.W. (2012) 'Simple solutions to complex problems: land formalisation as a silver bullet', in J.M. Otto and A. Hoekema (eds) *Fair Land Governance: How to Legalize Land Rights for Rural Development*, Leiden University Press, Leiden: 1–51.

Chatterjee, N., Y. Ho and C. Brummitt (2015) '"Dangerous" inequality spurs Widodo's Indonesia shakeup', *Bloomberg*, 3 February.

Cleaver, F. (2012) *Development through Bricolage: Rethinking Institutions for Natural Resource Management*, Routledge, Taylor and Francis Group, New York, NY.

Cramb, R.A. and J.F. McCarthy (2016) *The Oil Palm Complex: Smallholders, Agribusiness and the State in Indonesia and Malaysia*, NUS Press, Singapore.

Daulay, F.F. (2015) 'Terungkap, mereka dibalik dewan komisaris perusahaan "perambah" hutan' [Revealed, the people behind the board of directors of the company 'destroying' the forest], *Tribun Medan*, 4 November.

Davidson, J.S. and D. Henley (eds) (2007) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY.

De Soto, H. (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, New York, NY.

Deininger, K. (2003) *Land Policies for Growth and Poverty Reduction*, World Bank and Oxford University Press, Washington, DC and Oxford.

Deininger, K. and H. Binswanger (1999) 'The evolution of the World Bank's land policy: principles, experience, and future challenges', *World Bank Research Observer*, 14(2): 247–76.
Eco Daily (2016) 'Indonesia govt to streamline licensing for business setup, industrial zones', *Eco Daily*, 18 March.
Economist (2016) 'Infrastructure: the 13,466 island problem', *Economist*, 27 February.
El-Ghonemy, M.R. (2003) 'Land reform development challenges of 1963–2003 continue into the twenty-first century', *Land Reform*, 2: 33–42.
Fahlevi, F. (2015) 'Tiga kementerian tandatangani MoU penyediaan 9 juta hektare lahan transmigrasi' [Three ministries sign MoU concerning 9 million hectares of land for transmigration scheme], *Tribun Nasional*, 8 May.
Fitzpatrick, D. (2005) '"Best practice" options for the legal recognition of customary tenure', *Development and Change*, 36(3): 449–75.
Fitzpatrick, D. (2007) 'Land, custom, and the state in post-Suharto Indonesia: a foreign lawyer's perspective', in J.S. Davidson and D. Henley (eds) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY: 130–48.
Fogarty, D. (2014) 'Indonesia tries to clamp down on coal sector's worst excesses', *Mongabay*, 16 October.
Gumelar, G. (2015) 'Bagikan lahan, Jokowi dianggap tak paham reformasi agraria' [Distributing land, Jokowi considered not to understand land reform], *CNN Indonesia*, 9 March.
Hall, D., P. Hirsch and T.M. Li (2011) *Powers of Exclusion: Land Dilemmas in Southeast Asia*, NUS Press and University of Hawai'i Press, Singapore and Honolulu.
Harris, N., S. Minnemeyer, N. Sizer, S.A. Mann and O.A. Payne (2015) 'With latest fires crisis, Indonesia surpasses Russia as world's fourth-largest emitter', blog posting, World Resources Institute, 29 October. Available at http://www.wri.org/blog/2015/10/latest-fires-crisis-indonesia-surpasses-russia-world%E2%80%99s-fourth-largest-emitter
Heltberg, R. (2002) 'Property rights and natural resource management in developing countries', *Journal of Economic Surveys*, 6(2): 189–214.
Huizer, G. (2011) 'Research-through-action: some practical experiences with peasant organization', in G. Huizer and B. Mannheim (eds) *The Politics of Anthropology: From Colonialism and Sexism toward a View from Below*, Mouton Publishers, The Hague and Paris: 395–420.
Jpnn (2015) 'Ini sorotan KPA tentang program redistribusi lahan 9 juta hektar' [This is the KPA spotlight on the 9-million-hectare land distribution program], *Jpnn.com*, 5 March.
Kompas (2011) 'Kunci realisasi proyek di lahan: UU Pengadaan Lahan Ditunggu' [The key to implementing projects in the field: waiting for the Land Acquisition Law], *Kompas*, 23 August.
Li, T.M. (2014) *Land's End: Capitalist Relations on an Indigenous Frontier*, Duke University Press, Durham, NC.
Lucas, A. and C. Warren (2013) 'The land, the law, and the people', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 1–41.
Luttrell, C., I.A.P Resosudarmo, E. Muharrom, M. Brockhaus and F. Seymour (2014) 'The political context of REDD+ in Indonesia: constituencies for change', *Environmental Science and Policy*, 35: 67–75.

Margono, B.A., P.V. Potapov, S. Turubanova, F. Stolle and M.C. Hansen (2014) 'Primary forest cover loss in Indonesia over 2000–2012', *Nature Climate Change*, advance online publication. Available at www.forestlegality.org/sites/default/files/nclimate2277.pdf

McCarthy, J.F. (2006) *The Fourth Circle: A Political Ecology of Sumatra's Rainforest Regime*, Stanford University Press, Stanford, CA.

McCarthy, J.F. (2012) 'Certifying in contested spaces: private regulation in Indonesian forestry and palm oil', *Third World Quarterly*, 33(10): 1,871–88.

McCarthy, J.F. and M. Moeliono (2012) 'The post-authoritarian politics of agrarian and forest reform in Indonesia', in R. Robison (ed.) *Routledge Handbook of Southeast Asian Politics*, Routledge, New York, NY: 242–59.

McCarthy, J.F., P. Gillespie and Z. Zen (2012) 'Swimming upstream: local Indonesian production networks in "globalized" palm oil production', *World Development*, 40(3): 555–69.

McCarthy, J.F., J.A.C. Vel and S. Afiff (2012) 'Trajectories of land acquisition and enclosure: development schemes, virtual land grabs, and green acquisitions in Indonesia's outer islands', *Journal of Peasant Studies*, 39(2): 521–49.

Mead, N. (2015) 'China's Pearl River Delta overtakes Tokyo as world's largest megacity', *Guardian*, 28 January.

Merrey, D.J. and S. Cook (2012) 'Fostering institutional creativity at multiple levels: towards facilitated institutional bricolage', *Water Alternatives*, 5(1): 1–19.

Morris, C.W. (2000) 'The very idea of popular sovereignty: "we the people" reconsidered', *Social Philosophy and Policy*, 17(1): 1–26.

Murdaningsih, D. (2015) 'Jelang Hari Tani, pemerintah diminta tingkatkan kesejahteraan petani' [Approaching Farmers Day, government is asked to improve farmers' welfare], *Republika*, 23 September.

Otto, J.M. and A. Hoekema (2012) *Fair Land Governance: How to Legalize Land Rights for Rural Development*, Leiden University Press, Leiden.

Prabowo, D. (2016) 'Ini 40 RUU dalam prolegnas prioritas 2016' [These are the 40 draft laws in the 2016 national legislative program], *Kompas*, 22 January.

Reerink, G. (2012) *Tenure Security for Indonesia's Urban Poor: A Socio-legal Study on Land, Decentralisation and the Rule of Law in Bandung*, Leiden University Press, Leiden.

Rigg, J. (2006) 'Land, farming, livelihoods, and poverty: rethinking the links in the rural south', *World Development*, 34(1): 180–202.

Robinson, K. (2014) 'Citizenship, identity and difference in Indonesia', *Review of Indonesian and Malaysian Affairs*, 48(1): 5–34.

Robison, R. and V.R. Hadiz (2004) *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*, Routledge, New York, NY.

RRI (Rights and Resources Initiative) (2012) 'What rights? A comparative analysis of developing countries' national legislation on community and indigenous peoples', Forest Tenure Rights, RRI, Washington, DC, May.

Rusastra, I.W., E.M. Lokollo and S. Friyatno (2007) 'Land and household economy: analysis of agricultural census 1983–2003', Indonesian Center for Agriculture Socio Economics and Policy Studies (ICASEPS), Ministry of Agriculture, Bogor.

Safitri, M.A., N. Ramdhaniaty, Y. Arizona, G.A. Abimanyu, M. Muhajir and I. Arsyad (2015) 'Legality and justice in the establishment of forest zones in Indonesia', Policy Paper 2/2015, Epistema Institute, Jakarta. Available at http://www.epistema.or.id/download/Policy_Paper_Epistema_2-2015_English.pdf

Santoso, I. (2011) 'Revitalisasi industri kehutanan dan tantangannya ke depan Direktorat Jenderal Bina Usaha Kehutanan' [Revitalisation of forestry industry and future challenges for Directorate-General of Forest Industry Development], Kongres Kehutanan Indonesia V [Indonesian Forestry Congress], 22–24 November.

Saturi, S. (2014) '"Kawin" kementerian LH dan kehutanan, kerja berat menanti sang menteri' ['Marriage' of environment and forestry ministries, a difficult task for ministers], *Mongabay*, 26 October.

Saturi, S. (2015) 'Reservations about Indonesian "land reform" as details unclear', *Mongabay*, 2 April.

Schuck, P.H. (1992) 'Legal complexity: some causes, consequences and cures', *Duke Law Journal*, 42(1): 1–52.

Sekretariat Kabinet Republik Indonesia (2015) 'Sebelumnya perlu 2–4 tahun, izin investasi di sektor kehutanan kini paling lama 15 hari' [Previously it took 2–4 years, now investment permits in the forestry sector take a maximum of 15 days], Cabinet Secretariat of the Republic of Indonesia (Sekretariat Kabinet Republik Indonesia), Jakarta. Available at http://setkab.go.id/sebelumnya-perlu-2-4-tahun-izin-investasi-di-sektor-kehutanan-kini-paling-lama-15-hari/

Sikor, T. and D. Muller (2009) 'The limits of state-led land reform: an introduction', *World Development*, 37(8): 1,307–16.

Sjaastad, E. and B. Cousins (2009) 'Formalisation of land rights in the south: an overview', *Land Use Policy*, 26(1): 1–9.

Sonius, H.W.L. (1981) 'Introduction', in J.F Holleman (ed.) *Van Vollenhoven on Indonesian Adat Law*, Hartinus Nijhoff, The Hague: xxix–lxvii.

Srinivas, S., K.C. Bell, K. Toha, A. Zaenal and B. Collier (2015) 'A review of the Indonesian land-based sectors with particular reference to land governance and political economy', paper presented to the Annual World Bank Conference on Land and Poverty 2015, Washington, DC, 23–27 March. Available at www.oicrf.org/document.asp?ID=14940

Suara Pembaruan (2007) 'Reforma agraria sudah siap dilaksanakan' [Land reform is ready to be implemented], *Suara Pembaruan*, 6 June.

Sudaryanto, T., S.H. Susilowati and S. Sumaryanto (2009) 'Increasing number of small farms in Indonesia: causes and consequences', paper presented to the 111th Seminar of the European Association of Agricultural Economists, Canterbury, 26–27 June.

Sunderlin, W.D., A.M. Larson and A.E. Duchelle (2014) 'How are REDD+ proponents addressing tenure problems? Evidence from Brazil, Cameroon, Tanzania, Indonesia, and Vietnam', *World Development*, 55: 37–52.

Suyanto, S. (2007) 'Underlying cause of fire: different form of land tenure conflicts in Sumatra', *Mitigation and Adaptation Strategies for Global Change*, 12(1): 67–74.

Thorburn, C.G. and C.A. Kull (2015) 'Peatlands and plantations in Sumatra, Indonesia: complex realities for resource governance, rural development and climate change mitigation', *Asia Pacific Viewpoint*, 56(1): 153–68.

Toha, K. and W.L. Collier (2015) 'Land control, governance and agrarian conflict in Indonesia', expanded version of paper presented to the Annual World Bank Conference on Land and Poverty 2015, Washington, DC, 23–27 March.

Tuan, D.T. (2002) 'Vietnam: consecutive agrarian reforms and success in family farming', Réseau Agriculture Paysanne et Modernisation (APM), Institut de Recherche et d'Applications des Méthodes de Développement (IRAM) and Fondation Charles Léopold Mayer pour le Progrès de l'Homme (FPH),

Cedex. Available at http://www.agter.org/bdf/en/corpus_chemin/fiche-chemin-59.html
Van Voorst, R. and R. Padawangi (2015) 'Floods and forced evictions in Jakarta', *New Mandala*, 21 August.
Velde, B.V. (2015) 'Q&A on fires and haze in Southeast Asia', CIFOR Forests News Blog, 25 August. Available at http://blog.cifor.org/23000/forests-news-update-qa-on-fires-and-haze-in-southeast-asia?fnl=en
Von Benda-Beckmann, F. (2003) 'Mysteries of capital or mystification of legal property?', *Focaal: European Journal of Anthropology*, 41: 187–91.
Von Benda-Beckmann, F. and K. von Benda-Beckmann (2013) *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation*, Cambridge University Press, Cambridge.
Von Benda-Beckmann, F. and K. von Benda-Beckmann (2014) 'Temporalities in property relations under a plural legal order: Minangkabau revisited', *Journal of Legal Pluralism and Unofficial Law*, 46(1): 18–36.
Von Benda-Beckmann, F., K. von Benda-Beckmann and M.G. Wiber (2006) 'The properties of property', in K. von Benda-Beckmann, F. von Benda-Beckmann and M. Wiber (eds) *Changing Properties of Property*, Berghahn Books, Oxford and New York, NY: 1–39.
Vorley, B., L. Cotula and M.-K. Chan (2012) 'Tipping the balance: policies to shape agricultural investments and markets in favour of small-scale farmers', research report, International Institute for Environment and Development (IIED) and Oxfam, December. Available at www.iied.org; www.oxfam.org
Warren, C. (2005) 'Mapping common futures: customary communities, NGOs and the state in Indonesia's reform era', *Development and Change*, 36(1): 49–73.
Warren, C. and J.F. McCarthy (2009) (eds) *Community, Environment and Local Governance in Indonesia: Locating the Commonweal*, Routledge, Taylor & Francis Group, Abingdon and New York, NY.
White, B., S.M. Borras Jr. and R. Hall (2014) 'Land reform', in B. Currie-Alder, R. Kanbur, D.M. Malone and R. Medhora (eds) *International Development: Ideas, Experiences, and Prospects*, Oxford University Press, Oxford: Chapter 28. Available at http://www.developmentideas.info/chapter/land-reform/
White, B., S.M. Borras Jr., R. Hall, I. Scoones and W. Wolford (2012) 'The new enclosures: critical perspectives on corporate land deals', *Journal of Peasant Studies*, 39(3–4): 619–47.
Wibowo, A. (2010) 'Potensi degradasi dan manfaat lingkungan akibat pembangunan hutan tanaman' [The potential for degradation and the advantages for the environment as a consequence of the development of commercial forestry], Centre for Plantation Forest Research and Development (Pusat Penelitian dan Pengembangan Peningkatan Produktivitas Hutan), December.
Winoto, J. (2010) 'Taking land policy and administration in Indonesia to the next stage', in K. Deininger, C. Augustinus, S. Enemark and P. Munro-Faure (eds) *Innovations in Land Rights Recognition, Administration, and Governance*, World Bank, GLTN, FIG and FAO, Washington, DC, April: 12–19.
World Bank (2009) *World Development Report 2008: Agriculture for Development*, World Bank, Washington, DC.
World Bank (2014) 'Project performance assessment report: Indonesia. Land Management and Policy Development Project', Report No. 85809, World Bank, Washington, DC, 5 March.
World Bank (2015a) *East Asia's Changing Urban Landscape: Measuring a Decade of Spatial Growth*, Urban Development Series, World Bank, Washington, DC. Available at http://www.worldbank.org/content/dam/Worldbank/

Publications/Urban%20Development/EAP_Urban_Expansion_full_report_web.pdf
World Bank (2015b) 'Indonesia economic quarterly December 2015: reforming amid uncertainty', World Bank, Jakarta.
Wright, G. (2012) 'Indigenous people and customary land ownership under domestic REDD frameworks: a case study of Indonesia', *Law, Environment and Development Journal*, 7(2). Available at http://hdl.handle.net/1885/39666
Zhuang, J., R. Kanbur and D. Maligalig (2014) 'Asia's income inequalities: recent trends', in R. Kanbur, C. Rhee and J. Zhuang (eds) *Inequality in Asia and the Pacific*, Asian Development Bank and Routledge, Oxon: 21–36.
Zhuang, J., R. Kanbur and C. Rhee (2014) 'What drives Asia's rising inequality?', in R. Kanbur, C. Rhee and J. Zhuang (eds) *Inequality in Asia and the Pacific*, Asian Development Bank and Routledge, Oxon: 37–57.

PART 1

Land use and land law: the big picture

2 The plantation and the mine: agrarian transformation and the remaking of land and smallholders in Indonesia

Nancy Lee Peluso

Across Indonesia, radical changes are taking place in how land is being used, claimed and controlled. The conversions from forests and farms to plantations and mines are particularly significant. West Kalimantan (in Indonesian Borneo) is both representative of these changes and unique. It was once a forested landscape (Brookfield, Potter and Byron 1995), but as of 2014, some 91 per cent of the province's land had been formally allocated for present or future industrial uses (Pilin 2014). Thirty-six per cent of the province's land is held by oil palm companies, 37 per cent is allocated to industrial mining and 27 per cent is maintained by the Ministry of Forestry for industrial forest concessions, protected forests and nature reserves (Pilin 2014).[1] Hundreds of small mining sites dot West Kalimantan's industrialised landscapes, their territorial reach uncounted.

Earlier versions of this paper were presented at the Australian National University, the University of California and the University of Copenhagen. I have benefited from the questions, comments and conversations at those forums. This version of the paper has benefited from the comments of Sidney Jones, Lesley Potter, Alice Kelly, Annie Shattuck and John McCarthy. I am grateful to John McCarthy and Kathryn Robinson for their invitation to present these ideas at the 2015 Indonesia Update Conference.

1 Note that this figure differs significantly from the Ministry of Forestry's claim that 58 per cent of the province is forest land (www.infokalbar.com/2015/09/luas-kawasan-hutan-di-kalimantan-barat.html). Although it may formally remain part of the forest estate, much of this land has been repurposed to a non-forest species, oil palm. See, for example, Carlson et al. (2012).

Indonesia's sustained part in the global palm oil boom and the country's industrial and small-scale mining rushes have made headlines and filled scholarly volumes the world over (Yuan 2000; Erman 2007; McCarthy, Gillespie and Zen 2012; Maimunah 2014; Potter 2015; Rigg 2015). In their wake, smallholder farmers have lost control of territory (Rachman 1999; McCarthy, Gillespie and Zen 2012; Lucas and Warren 2013; Potter 2015). Yet, the meta-narratives associated with land rushes and grabs, or with the 'illegalities' of small- and large-scale mining, do not fully explain what is happening on the ground (Lahiri-Dutt 2004; Borras and Franco 2013). I argue here that how land losses have been precipitated at different times, what generated them and how small farmers have responded have, at least in one corner of West Kalimantan, been heavily determined by local history. Some of the monopolising effects of large-scale land acquisitions may never be felt.[2] Nevertheless, the converging trajectories of dynamic local practices, claims and histories have not been adequately accounted for in analyses dependent on formal, state-recognised categories of land and land ownership (Lucas and Warren 2003, 2013; McCarthy 2013).

Critically, it is not land scarcity—the usual explanation for farmers being motivated to seek off-farm income[3]—but the low value of the commodities farmers produce that has driven many northwestern Kalimantan smallholders to participate in mining or to turn over their land to corporate oil palm companies. I use the term 'smallholders' here to refer to semi-autonomous, rural producers of agricultural, agroforestry or mineral resources who control less than 15 hectares of rural agrarian land (specifically in Kalimantan). Many of the smallholders in Kalimantan control 3, 5 or 10 hectares of agricultural land. Not long ago, this would have allowed them to grow enough rubber, rice and fruit to subsist, to send their children to school and to manage the increasing cost of living. Now, however, smallholders in West Kalimantan and elsewhere in Indonesia are reeling from the sharp declines in rubber and other commodity prices. Low commodity prices have forced some of these farmers

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2 In the case of industrial agriculture, much of the oil palm land held in land banks has not been planted and never will be (McCarthy, Vel and Afiff 2012; Potter 2015). In the case of industrial mining, many mining permits are for exploration only (but exploration can still damage the land). At the time this paper was written (early 2016), most industrial mining concessions in the western districts of West Kalimantan were not active. Law 4/2009 on Mineral and Coal Mining imposed a 2014 deadline for concessionaires to construct first-stage processing facilities. Rather than comply, most companies stopped operations.

3 See Bernstein (2012) and Li (2015), for example, but compare with McCarthy, Vel and Afiff (2012) and Potter (2015).

to work for cash as poorly paid 'coolies' (*kuli*—their term) on young oil palm plantations or in the potentially hazardous activity of small-scale gold mining.

For many rural families in northwestern Kalimantan, small-scale mining has filled what we might call the 'smallholder slot'—analogous to Trouillot's original conception of the 'savage slot' (1991). In contrast to industrial agriculture's corporate organisation, artisanal and small-scale mining is a smallholder pursuit that has more than filled the subsistence gap for many agrarian households.[4] Artisanal and small-scale gold mining, in particular, has the potential to produce surpluses that smallholder miners and gold diggers can deploy as capital or micro-capital.

The smallholder category remains important in Indonesia because it has emotional resonance, as politicians and investors have long realised. Indonesian government authorities justify the expansion of industrial agriculture and large-scale mining by claiming these will bring benefits to smallholders and create off-farm employment opportunities, even though industrial agriculture may take away farmers' control over thousands of small plots of land for 25, 35 or even 60 years (Pichler 2015) and despite the fact that large mines tend not to hire local people. Such appeals work, in part, because being a smallholder remains important to many rural people, who are proud of their heritage as small farmers or peasants (*petani kecil*)—even if, technically, they are now estate farmers (*petani kebun*) (Peluso 2015).[5] Unpacking local agrarian histories reveals these inconsistencies.

This chapter uses the recent agrarian history of a less studied part of West Kalimantan to demonstrate the obfuscations created by broad metanarratives and generalised terms for land and landholders. I refer to the region I study as MonSingSel, an area that comprises the post-decentralisation, expanded city of Singkawang (consisting of the subdistricts (*kecamatan*) of North, South, East, West and Central Singkawang) and the four surrounding subdistricts of East Selakau, Lembah Bawang, Samalantan and Monterado (Figure 2.1). No current administrative boundaries classify MonSingSel as a governance unit, but complex social and productive relations go on inside its loosely defined boundaries, due largely to historical connections.

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4 Artisanal and small-scale mining (ASM) refers to mining activities, generally unlicensed or informal, that are carried out with no or minimal machinery (ILO 2004).

5 Stoler (1985) also showed that Javanese plantation workers in Sumatra clung to definitions of themselves as *petani*, though in a way that might today be translated as 'peasant' rather than 'farmer'. Both are correct translations of the Indonesian term.

Figure 2.1 MonSingSel, consisting of the five subdistricts in Singkawang city plus the subdistricts of East Selakau, Lembah Bawang, Samalantan and Monterado

Local processes converging with the dynamics of state and corporate power have transformed rural landscapes—and household livelihoods—in West Kalimantan. In addition to differing resource endowments, differences in racialised cultural politics and political economy have affected the histories, and thus the present conditions, of different parts of the province. In the process, local, national and global histories have become entangled (Hart 2003). One vehicle of entanglement has been the superimposition of state land and subject categories on locally held lands. Allegedly benign formal categories applied by national land agencies and managers, such as 'state land', 'customary (*adat*) land', 'private property' and 'Indonesian citizens', serve political ends and generate political

consequences when they conflict with local practices and understandings (Kelly and Peluso 2015). Similarly, a term like 'empty land' may be applied to a space of dispossession—to land depopulated by agrarian violence or to land that is awaiting redevelopment. Such terms are means by which state institutions make claims on land, resources and subject populations, and shape the livelihood choices smallholders are able to make (Peluso and Lund 2011; Borras and Franco 2013; McCarthy 2013).

Through a reading of the agrarian past, I argue in this chapter that contemporary agrarian relations derive from agrarian histories—that the past helps shape the present. Behind the mining and plantation booms in the northwestern corner of West Kalimantan lies a complex history of dispossession, transmigration and racialised state building, as well as local agency. Violence has generated change, and some changes have led to violence. The lands in northwest Kalimantan have been emptied and filled, populations have been removed and resettled, and resources have been produced, allocated and claimed during several rounds of agrarian change over the past 50 years. Meta-narratives about land grabbing, dispossession and smallholder projects have a presence in the stories that follow, but they do not adequately explain the ways in which land has been used, claimed, owned and defended in this part of the province over the past half-century.

The land categories developed by Indonesia's colonial, authoritarian and democratic governments have never corresponded with the local realities in much of West Kalimantan; this is the case in many other parts of Indonesia as well. This chapter shows that, in the course of agrarian transformations, new kinds of smallholders and new ways of authorising property rights have emerged. Understanding the processes that have led to these changes is critical to understanding that land politics is highly situated. The implication is that policy approaches to land reform, reallocation and development will not necessarily work if the relevant property categories are not understood in terms of their local histories and meanings.

REWRITING THE LAND OF MONSINGSEL IN THE SCRIPT OF THE INDONESIAN NATION

Contemporary property relations in corporate oil palm production and small-scale gold mining in West Kalimantan are products of longer, contested trajectories of land-based productions and local political ecologies, accompanied by substantial state interventions. Throughout Indonesia, agrarian violence ushered in the agrarian transformations that took place at the beginning of the Suharto era in 1966 (Farid 2005; Lucas and Warren

2013). Both the violence and the nature of the agrarian transformation varied in form and in their effects on land use and landholdings—across Indonesia, within provinces and within localities. After the Suharto regime came to power, state actors continued to use the discursive strategies developed by colonial foresters and other colonial state actors, revamping the meanings of 'empty' and 'abandoned' lands to justify land expropriations (Peluso and Vandergeest 2011). Overall, the changes fitted a large-scale, state-orchestrated program of primitive accumulation, in the name of 'cleaning up' communism (Farid 2005). Unlike elsewhere in the archipelago, a key outcome of the violence in West Kalimantan was that smallholders of Chinese ancestry were forced off their land in rural areas (Coppel 1983; Somers-Heidhues 2003).

The 1945 Constitution laid the basis for national control of resource-bearing lands, stating that forests and minerals were legally held by the state in the name of the Indonesian people. Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) established mechanisms for land acquisition, besides embracing western-style private property rights, landholding ceilings and other agrarian reforms (many of which were never realised). The year 1967 was a watershed for establishing the legal foundations of state land and resource acquisition procedures. Law 5/1967 on Forestry, enacted in May 1967, claimed some 72 per cent of Indonesia's land base as national forest ('political forest'), creating the legal conditions for extensive logging and conversion, as well as protection, of the land controlled by the Ministry of Forestry. Two other laws enacted in the same year, Law 11/1967 on Basic Regulation of Mining and Law 1/1967 on Foreign Investment, laid the foundations for the extractive activities of the state and private enterprise in the decades to come. Arguably, however, these laws also marked the beginning of the end for policies that actually prioritised the smallholder systems of agrarian production and landholding that had been the basis of rural Indonesians' everyday lives.[6]

These national legal foundations tell only a small piece of the stories that unfolded in Indonesia's regions. Each region has its own locally situated history, a product of its resource endowments, political economy and cultural politics, playing out in a unique agrarian environment. In the rest of this chapter, I focus on the most salient events in MonSingSel, West Kalimantan, over the last 50 years.

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6 For an excellent review, see the introductory chapter to Lucas and Warren (2013).

A silenced history of violence[7]

Agrarian violence in West Kalimantan in late 1967 followed the intense struggles during the Indonesia–Malaysia conflict known as Confrontation (Konfrontasi), which lasted from 1963 to 1966. Konfrontasi had led to a militarisation of the province, especially along its long border with Sarawak (Mackie 1974; Poulgrain 1998). The Indonesian Communist Party (Partai Komunis Indonesia, PKI) and the left were criminalised, leaving the Sarawakian and Chinese guerrilla fighters trained in West Kalimantan by Sukarno—the Sarawak People's Guerrilla Force (Pasukan Gerilya Rakyat Sarawak, PGRS)—in a difficult position. They were hunted down by Indonesian troops in the forests, villages and longhouses that fell within a newly widened border area stretching from the international boundary with Sarawak south to Singkawang. Chinese farmers and traders living in the long-settled agricultural region of MonSingSel were accused of constituting the famous 'water in which the communist fish swim', and were thus also targeted by the army for political action (Feith 1968; Peluso and Harwell 2001; Davidson and Kammen 2002). After many months of covert activity intended to remove all 'suspect' individuals from the rural border areas, which by definition included MonSingSel, the military and its local allies succeeded in mobilising the locals against the Chinese smallholders living in the area. This event has become known locally simply as 'the Demonstration' (Demonstrasi). Dayaks, Madurese, Javanese and Malays in the districts of Sambas, Sanggau and Pontianak were provoked into evicting all Chinese from the rural areas of West Kalimantan through both violent and non-violent means. At the time, MonSingSel had one of the densest populations of smallholder farmers with Chinese heritage.[8]

The military decided that all Chinese farmers and their families were to be moved out of the vast rural areas, and their lands expropriated and redistributed (Soemadi 1974). The evictions during the next few months, many of them led by Indonesian Special Forces (Resimen Para Komando Angkatan Darat, RPKAD), together with the subsequent seven years of

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7 Parts of this section have been published elsewhere (Peluso 2008, 2009; Peluso and Vandergeest 2011) and combined with new information I collected during the course of about eight months of ethnographic fieldwork in 2014 and 2015.

8 The Chinese population was diverse in terms of the level of political engagement, citizenship status and languages spoken. Most Chinese were small farmers. They were not hated by local people in the way they were in Java or even much of Sumatra at the time. Many West Kalimantan Chinese had married into local families or had genealogies of intermarriage going back to the opening up and development of the land in the eighteenth and nineteenth centuries. For more context, see Coppel (1983) and Somers-Heidhues (2003).

martial law in West Kalimantan, created the conditions for the massive agrarian transformation that followed. Between 1968 and 1974, violent state actors enrolled and cajoled local people into engaging in new types of land use, new forms of landholding and new patterns of settlement. The intent was to repopulate the rural areas with non-Chinese Indonesians, to create customary and state lands where they had not existed previously and to remake the region's land into national territory. The effect was to overturn patterns of local land use and landholding that had been in place for more than a century (Somers-Heidhues 2003; Peluso 2008).

This violent conjuncture was marked not only by the ruptures of the evictions, but also by the fractures wrought by army- and government-assisted migrations of locals onto the emptied lands. Long before the national government's well-known transmigration program sent migrants from Java to Kalimantan, these localised migrations rearranged people, property and patterns of production in West Kalimantan's unsettled agrarian environments. Reterritorialising the abandoned lands as 'Indonesian' began with local migrations of West Kalimantan-based non-Chinese Indonesians (*pribumi*). Thus, at the same time as they were searching for 'foreign and domestic communists' in the forests and rubber gardens in the extended border area, RPKAD personnel were seeking to persuade local, non-Chinese farmers to move onto the lands left by an estimated 100,000 dispossessed Chinese.[9]

Only *pribumi* were permitted to live in rural areas; ethnic Chinese had to live in the cities or in designated peri-urban settlements. Not-so-imaginary lines were drawn around Singkawang and its outskirts to indicate the border between urban and rural: a military base was located outside Singkawang at Kulor, one of the earliest sites of Chinese settlement, and of the conversion of forest to agriculture and mining, in 1740–45 (Yuan 2000; Somers-Heidhues 2003; Peluso 2008).

Before 1967, the Chinese or Chinese–Dayak families in the lowlands had lived in clusters of five to ten houses, working small plots of paddy rice, tending rubber and fruit gardens, collecting forest products and occasionally panning for gold in their favourite spots (Somers-Heidhues 2003). The types of tenure in the lowlands (all informal) were slightly different from those in the upland Dayak settlements.[10] Land was still abun-

9 This is the figure estimated by Douglas Kammen (personal communication, 2001). An article in my possession states that more than 52,857 hectares of land were abandoned during this period (Anonymous 1970: 13).

10 On the forms of tenure in West Kalimantan see, for example, Dove (1985), King (1993), Brookfield, Potter and Byron (1995), Colfer et al. (2000), Wadley (2003), Padoch and Peluso (2006), McCarthy and Cramb (2009), De Koninck, Bernard and Bissonnette (2011) and Eilenberg (2014).

dant enough that anyone wanting to construct new rice fields (*sawah*), plant rubber or have a vegetable garden could find the space to do so.

After the Demonstrasi, Indonesian soldiers facilitated migration onto this land in a number of ways. Army intelligence officers primed local Dayak leaders to get 'their people' to 'come out of the hills' to take over Chinese houses, shops and fields in the lowlands (author interviews, MonSingSel, 1998, 2004, 2015). The RPKAD also recruited Malay and Dayak farmers and rubber tappers to occupy the agrarian spaces left empty by the evicted Chinese, to harvest the maturing rice in their *sawah* and to tap the rubber in the gardens they had been forced to leave behind. Soldiers encouraged the settlers to burn the vegetation and cultivate swidden fields in the new locales in order to establish 'customary' claims over the land. In other places, local people put up planks to stake their claims to land and houses in nearby settlement areas.

Many Chinese residents asked neighbours and friends to take care of their homes, crops and rubber gardens, assuming they would return when the 'troubles' were over. Indeed, some Chinese left before the violence—told by local Dayak friends that 'something was up'. They did not anticipate that they would be forbidden to return for many years.[11]

The RPKAD and other military personnel supervised the consolidation of the small settlements established on formerly Chinese land into larger villages of at least 200 households, the minimum size necessary to be recognised as an administrative unit (author interviews, 2015). Thus began the process of 'village-isation' (*desa-isasi*), which took place in West Kalimantan well before it became national policy in Law 5/1979 on Villages. This meant moving more Malays, Dayaks, Javanese and Madurese into the rural areas of MonSingSel from other parts of the province. The villagers elected, or army officers appointed, village heads, usually Dayaks in the case of MonSingSel. The new village heads gave the migrants permission to settle, and redistributed the abandoned fields, fruit trees and rubber gardens. In an army document, this process is referred to as 'land reform' (Anonymous 1970). Many soldiers also collected unofficial taxes on the harvests that the new settlers enjoyed.

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11 Nevertheless, some Chinese and Chinese–Dayaks did manage to remain in the rural areas. Some of mixed heritage lived as Dayaks, hidden by their association with the Dayak (usually the mother's) side of the family. Others were protected by villagers who objected to what the Javanese soldiers were doing, and 'became Dayak' (*masuk Dayak*). One village head told me he had allowed 34 Chinese families to return to the village in the late 1970s; they went back to making swiddens and tapping rubber for him. These localised migrations (in both directions) continued after the start of the government-sponsored colonisation of the area by hundreds of transmigrant families in 1984.

Before returning to West Java and Sumatra in 1974, the troops required the migrants to formally change their places of residence, and burned any abandoned houses that still remained unoccupied (author interviews, February 2015). They also forbade the repatriation of any Chinese property, movable or immovable, that had been seized in the wake of the Demonstrasi (author interviews, October 2014).

None of the above has ever been written about in Indonesian history books, and even today many educated Indonesians in Java, Sumatra and elsewhere do not know about these events as part of their national historical legacy.[12]

Cultivating smallholders: two rubber plantation schemes

Following this period of violence, the national government rolled out two rural development schemes across the country, both claiming to be supportive of *pribumi* smallholders. The emptied land in MonSingSel was deemed suitable for these programs, given the generally dense agrarian settlement and prevalence of peat soils in other parts of MonSingSel. Though both projects have been documented widely, I discuss them here in the context of counter-insurgency agrarian transformations, initiated as political violence subsided.

The first scheme was known as the People's Rubber Development Scheme (Pembangunan Perkebunan Karet Rakyat, PPKR).[13] The program's managers told villagers to identify blocks of customary land that would be suitable for growing rubber, and the villagers determined how the plots would be distributed among households, for example, by lottery. As with similar schemes in Malaysia (organised by the Malaysian government's Federal Land Development Authority), smallholders would retain control of the land and remain responsible for any debts incurred during production; no corporations or state enterprises were established. The use of the term 'customary' (*adat*) to identify the sites for PPKR projects was thus critical here. The process of titling the land has generally been depicted as the privatisation of collectively held customary land to individual households. Detailed histories I have collected, however, indicate that, prior to 1967, a mix of Chinese, Dayaks and others of mixed heritage farmed (and therefore had claims to) the land where

12 A few academics have written critically about the political events without discussing these migrations; see, for example, Davidson and Kammen (2002), Somers-Heidhues (2003), Peluso (2008) and Davidson (2008).

13 On the PPKR scheme in West Kalimantan, see Penot (1995), Potter and Badcock (2007) and Peluso (2009).

PPKR projects would later be sited. This smallholder plantation scheme thus played a key role in making the landscape 'Indonesian' or *pribumi*.

The PPKR scheme was one way in which the government altered the image of rubber from a Chinese smallholder/planter commodity to one with an indigenous face (Somers-Heidhues 2003; Peluso 2009). The Indonesian state facilitated this politically and the World Bank assisted financially. Under the scheme, farmers were given small loans to cover inputs and labour costs, to be paid back over time with interest. After paying off their debts to the Indonesian People's Bank (Bank Rakyat Indonesia, BRI), the farmers would receive private title to their 1-hectare plots of land.

Some village leaders interpreted the allocation of land through the PPKR scheme as the national state 'giving back customary land' to local authorities. Some claimed that their predecessors had 'lent' the land to Chinese 100–200 years before. Others said that any cleared or cultivated land within village boundaries, if abandoned, could be construed as being customary village territory. After all, that had been the premise of landholding under the Dutch colonial government: 'unfree' land was customary land and 'free' land was state land (see Chapter 3 by Bedner). However, the actual circumstances of Chinese landholding in West Kalimantan did not fit the formal legal categories of either colonial or contemporary landholding. Some Chinese had been granted title to the land during the colonial era (though colonial law formally precluded Chinese from owning land) and some had leased land under the colonial government's land agreement (*huurovereenkomst*) program. The 1960 Basic Agrarian Law did not specifically mention former Chinese holdings, and in any case was not relevant to many Chinese landholdings because their status was ambiguous. State actors generally took the position that any land occupied or worked by Chinese had either been leased from the colonial state or was held illegally.[14]

The second rural development scheme was a state-run rubber enterprise operated in conjunction with the national government's transmigration program. Well documented for West Kalimantan as elsewhere

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14 Briefly, this view referenced the colonial-era legislation in 1918 allowing Chinese to lease state lands for agriculture for short (25-year) leases under the *huurovereenkomst* program (Somers-Heidhues 2003). Neither the legacy of that legislation nor the complex circumstances of landholders with Chinese heritage were addressed in the Basic Agrarian Law of 1960. The assumption nationally (promoted by the colonial and Suharto governments) was that Chinese were all rich landlords and landholders (as indicated in Anderson 1983), but this certainly did not fit the reality for West Kalimantan's rural Chinese (Cator 1936; Coppel 1983). Chinese in Java had already been forced to move to cities and towns during earlier colonial times (Suryadinata 1978).

(Ward and Ward 1974: Charras 2006), the story of transmigration is particularly important in MonSingSel because the events of the preceding years had already caused so much change and movement. Transmigration was another component in the conditions that would both delay the arrival of oil palm and facilitate gold mining several decades later.

In 1979, village leaders across MonSingSel were visited by an 'engineer' from West Java and then invited to Bogor and Jakarta to discuss whether they wished to host a state-run plantation enterprise, Perseroan Terbatas Perkebunan XII (PTP XII), on the 'state' or 'empty' land around their villages. This World Bank-funded program would facilitate more migrations, both local (again rearranging village spaces and settlement patterns) and long distance (from other Indonesian islands). In MonSingSel, the 'state' lands targeted by the scheme clearly included former Chinese lands (still in fallow) that had not been rendered 'customary' by the PPKR scheme; in other parts of the province where mature timber-bearing forests were still intact, the term usually referred to areas that had been newly designated as state forest (*hutan negara*) by the Ministry of Forestry (some of which were converted for transmigration projects).

The proposal was for the villagers to receive assistance to develop 70 per cent of the land (the *plasma* portion of the estate) as smallholder rubber plantations; the other 30 per cent (the nucleus estate, or *inti*) would be operated by PTP XII using hired labour. After paying off their loans for the *plasma* land plus interest, the smallholders would receive title to individual 2-hectare plots, although they had usually given up more than that to the project. The nucleus estate would remain state land.

Most village heads in MonSingSel agreed to accept transmigrants as constituents. Several smaller villages close to Singkawang refused to participate in the scheme or were unable to do so because they did not have enough land left after participating in the PPKR scheme. Other village heads negotiated aspects of the transmigration model. One leader required the reservation of houses in new transmigration settlements for his villagers and would only agree if all participants received *plasma* land—no nucleus land. Some villages negotiated the retention of their village or customary land in order to avoid losing their own village housing, but nonetheless gained access to transmigrant housing units. The local transmigrants (*translok*) moved into the settlement villages first, taking their pick of the rubber plots in 1983; transmigrants from outside arrived in waves starting the next year. Rubber tapping began in the late 1980s.

Gold dreams and discoveries

In 1988, an industrial mining company, PT Monterado Mas Mining (PT MMM), set up operations in Monterado, the centre of artisanal and coop-

erative mining in MonSingSel before the colonial era and still worked sporadically by local artisanal gold miners. PT MMM brought in a giant bucket dredge and industrial borers, accompanied by mapping capacity and knowledge of the region's geology and gold-mining history. The central government issued an exploration licence over a concession area, but former district officials claimed that the company started extractive operations without a formal permit.[15] They said that they witnessed large quantities of gold leaving the company's headquarters in armoured cars every day (author interviews, 2015). PT MMM signalled the possibility of re-mining many abandoned mining sites using mechanised technologies. The advent of new mining technology enabled the revitalisation in the 1990s of areas that had first been mined commercially in the mid-eighteenth century by the earliest migrant-settlers from China (Jackson 1970; Yuan 2000; Somers-Heidhues 2003).

At the same time as the company was exploring around MonSingSel, small-scale miners from Sekadau district in the interior of Kalimantan began to seek access to mining land in MonSingSel. They had developed a portable dredge called an Eskade, powered by a portable electric generator, to use in gold mining—rivalling the small dredges brought in from China. Rather than applying to the national or regional government for a permit, the crew bosses typically contacted local residents or village or customary leaders to obtain permission to mine for gold on private or village land.[16] Many crew bosses made local landholders partners in their projects or paid them a percentage of the finds, which could be substantial. Unlike PT MMM, they constructed their work crews from local as well as outside labour.

From 1988 to 1995, both the area of small-scale mining and the number of participants expanded, even as the tensions between small-scale miners and PT MMM increased. The land within and around the company's concession area was particularly lucrative, and part of it occupied what villagers had come to regard as their customary land. Tensions came to a head in 1996 when the small-scale miners attacked the company, frustrated by its refusal to hire locals and by their exclusion from the gold-rich land inside village territories. They burned the company's barracks and offices, and the giant dredge at Bridge 25. The managers and their imported employees ran away, never to return. A smallholder gold rush ensued, spreading widely to encompass more distant gold-mining sites.

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15 Soelistijo, Santoso and Suseno (2014: 17) dispute this, claiming that PT MMM had a commercial production permit from the Directorate General of Mining.

16 The miners' means of gaining access to the sites were reminiscent of the techniques used by illegal or small-scale loggers seeking access to marketable wood on private lands.

Providing a visual clue to the landscape effects of virtually unregulated small-scale mining, Figure 2.2 is a Google Earth image showing one of MonSingSel's largest contiguous mining complexes. It is known by the name of the nearest village, Gowaboma, and straddles an invisible administrative boundary between Monterado subdistrict (Bengkayang district) and Singkawang. The complex covers an estimated 200 square kilometres.

Conjunctural conflicts at the millennium: national, regional, environmental

The events in West Kalimantan in 1996–97 turned out to be a harbinger of the major changes about to unfold on a national scale. The nation was on the brink of a massive political and economic transition that would widely rework access to and control of land everywhere, transforming smallholders in the process. West Kalimantan's agrarian environments were again to be the theatre and the subject of the play, echoing 1967 but with different initial conditions influencing the times and places. Ethnic violence between Madurese and Dayaks broke out in late December 1996, escalated in January and subsided only in May 1997, spreading throughout Sambas, Sanggau and Pontianak districts (Putra and Djuweng 1999). Madurese, Malays and Dayaks had been allocated farmland around the PT MMM site and all were mining for gold on the grounds of the evicted mining company (author interviews, 2015).

These events generated a strange early encounter between MonSingSel rubber farmers and oil palm. The ethnic violence had frightened off the staff of the state-run enterprise, PTP XII, whose headquarters were located next to those of PT MMM. Though the employees returned to work a few months later, they fled for good in 1999 when fresh violence broke out. The company then moved its headquarters to Sintang district in the interior of West Kalimantan. The new managers offered MonSingSel's farmers the option to switch from rubber to oil palm, since that was the commodity they were managing in Sintang. The farmers declined this offer, however, because their rubber trees were producing well and they felt that changing commodities would waste the 10 or more years of productivity left in their trees (author interviews, 2015).

The El Niño year of 1997 saw the biggest forest fires in Borneo since 1983 (Harwell 2000; Mayer and Suratmoko 2000). The fires were particularly bad in the south of West Kalimantan, around Ketapang district, but the haze travelled to MonSingSel, affecting rice, fruit and rubber harvests. In the wake of the fires, an untapped source of gold was discovered in a formerly forested and lightly populated area of Ketapang.

Figure 2.2 Gowaboma mining complex, eastern edge, and surrounding lands

Many MonSingSel miners and investors established operations in this less populated, and less densely claimed, new gold frontier.

The Asian economic crisis of 1997–98 led to a drop in gold prices, but the rupiah also fell, making gold a safe haven. Around MonSingSel, hundreds of small, medium and large mining sites still dotted the denser, urbanising landscape. Whereas new technologies and abundant gold reserves in dispersed sites had driven the gold rush in the early 1990s, now it was the economic crisis that drove production: construction labourers returned home from the cities looking for work and income, and many businesses slowed, cutting off other sources of off-farm work. Gold mining was a lucrative source of off-farm labour, and many sites attracted new waves of local, regional and long-distance migrants.

Between 1998 and 2003, the transition from the Suharto regime brought far-reaching political and economic reform. Decentralisation took effect in 2001, and many key government functions were devolved to districts and municipalities. Districts gained great administrative power but they also had to generate more of their own revenues. Land and resources were to become key sites for the accumulation and investment necessary to fund their budgets (Casson 2000; Resosudarmo 2005). The revised Forestry Law (Law 41/1999), however, maintained centralised control of national forest lands.

While new national and regional movements espousing land reform, agrarian reform and indigenous land rights were beginning to emerge (Lucas and Warren 2013), they had little or no effect in most of MonSingSel.[17] Re-emergent ethnic conflict in 1999 pitting Malays and Dayaks against Madurese led to many of the latter being forced from their land, especially in the districts of Sambas and Sanggau in West Kalimantan's interior. The Singkawang government resettled many of them inside the city, offering them land, housing and financial assistance. Many Madurese held title to agricultural land in the villages they had left, meaning that the land could not legally be confiscated (author interviews, 2015). However, selling the land they had been forced to abandon was often difficult and required the assistance of village leaders.

At this time, the number of corporate and smallholder oil palm ventures was increasing in other parts of West Kalimantan at a rapid rate—but the industry had not yet moved into the MonSingSel area (Potter 2011; McCarthy 2013). So what was happening locally in MonSingSel to

17 A period of Dayak cultural revivalism did take place, however, with Salako and Kendayan Dayaks building cultural centres and *adat* houses and reviving traditional ceremonies; Malays in Sambas district also made claims to and reinvented customary traditions at this time (Davidson and Henley 2007).

keep the oil palm companies out, even as district offices in other parts of the province were making land deals? Some land was still tied up or its status was ambiguous. Violence and internal mismanagement of the local division of PTP had led it to declare bankruptcy in 1999, and the real price of rubber had climbed steeply. Rubber smallholders had physical control of their smallholdings, although most did not yet have legal title to the land. For more than a decade after PTP's bankruptcy, they were able to sell their rubber to local shopkeepers and keep 100 per cent of the profit. However, the bank would not turn over the land titles to them until they had completely repaid their debts. The PPKR rubber lands were also in transition: some smallholders had paid off their debts and obtained title to their land whereas others had not.

Titling mechanisms such as the ones attached to the PPKR and PTP schemes were more than just simple administrative arrangements; they were ways of creating new pathways to private property rights for new populations of smallholders (local and long-distance *pribumi* migrants). They also imparted authority for the establishment of property rights to new actors—for example, the RPKAD or army officers who convinced people to move, the village heads who allowed people to settle or take over the fields and rubber plots of departed Chinese, and the officials who extracted informal payments from the new migrant-settlers.

Thus, we can say that the confusion surrounding the privatisation of so-called state and customary lands—specifically in this region—had its origins in the agrarian violence of the 1960s and 1970s. It was at this time that the land acquired the status of state or customary land, intended to erase the history and memory of Chinese occupation. The status of the land changed yet again when *pribumi* smallholders were offered the chance to gain private title to this state or customary land by participating in the PPKR and PTP schemes. Each time, the change in status was sanctioned by a new set of actors, beginning with the military, and later extending to village heads and to planners and policy-makers in the national and regional governments.

While the government planners of these plantation and resettlement projects were speaking about categories of 'state', 'customary' and 'abandoned' or 'empty' land, in fact, under the radar, they were slipping profound social and legal transformations into place. When PTP fell into bankruptcy and the province was racked by repeated violent demonstrations, it was not predictable that the land-titling objectives of these government planners would ever be reached. Although some smallholders did not receive their titles for some 30 years after the PTP project began, the goal of titling the majority of the land will probably be achieved in 2016, the state's deadline for auctioning off the remaining plots with debts outstanding.

The global financial crisis and oil palm expansion

The global financial crisis of 2007–09 saw a number of different land-related trajectories come together to bring oil palm plantations to MonSingSel. In other parts of West Kalimantan, decentralisation had facilitated oil palm expansion (McCarthy, Gillespie and Zen 2012; Potter 2015) but the arrival of oil palm in MonSingSel was delayed until the end of the first decade of the twenty-first century. As noted above, even after decentralisation, and the departure of PTP XII from this region, MonSingSel's farmers continued to tap rubber, encouraged by high rubber prices and the continued productivity of their trees.

By 2008, however, rubber farmers were hurting. Food prices were rising and world rubber prices had dropped to radically low levels (see Chapter 14 by Potter). More seriously, after 25–30 years of production, many of the high-yielding varieties of rubber trees planted on PPKR and PTP lands were reaching the end of their productive cycles. Most farmers dependent on rubber for the majority of their household income simply did not have the capital to replace their dying rubber trees with new stock (Potter 2015).

The potential to bolster local incomes by leasing land to and imposing land taxes on medium and large agricultural enterprises may have been what pushed the three post-decentralisation district governments in MonSingSel—Bengkayang, Sambas and Singkawang—to find solutions to the problems created by the uncertain status of former PTP lands. Facing different constraints and opportunities, they adopted different approaches to the leasing of land to corporate growers. Singkawang did not allow concessions of more than 150 hectares within its expanded city boundaries,[18] while Sambas and Bengkayang were willing to lease larger areas. Both of the latter two districts had significant tracts of nucleus estate land left after PTP went into bankruptcy, and both had many farmers holding non-productive rubber trees and no capital with which to replace them. The latter was true in parts of Singkawang as well; there, farmers were enticed to sell or lease their land to medium-sized enterprises specialising in fruit or non-timber forest products. Rubber prices remained volatile, discouraging many farmers from replanting that commodity.

Private oil palm corporations such as Tanjung Rhu and Darmex made agreements with landholders to access newly minted private land, including privatised PPKR land and former PTP XII *plasma* land. They

18 That Singkawang, a city, would have sizeable tracts of land suitable for agriculture is somewhat surprising, until we recognise that, in 2001, 17 villages around the city's borders with considerable areas of agricultural land were annexed into Singkawang.

also reached agreements with village heads to access relatively unproductive customary land—in many cases, land that had not previously been cultivated because of its medium to deep peat soils. Some village leaders also apparently made deals involving former PTP land that was still in limbo, either because the loans for the land had not been paid off or because the status of the land was unclear (author interviews, 2015). Meanwhile, Singkawang mayor Hasan Karman fulfilled a 2010 campaign promise by persuading the central government (and the bank: BRI) to create a process of debt repayment for former PTP XII *plasma* farmers, thereby allowing many of them to repay their debts and acquire title to land. This has allowed oil palm companies to take over the land owned by these smallholders, simply by purchasing it or by paying compensation for long-term access. As well as these legitimate and semi-legitimate ways of acquiring land, many oil palm companies have been shown to be illegally clearing land outside their concession areas (Hendrawan et al. n.d.).

The late arrival of oil palm in MonSingSel meant that the terms of the land agreements the companies were prepared to offer farmers were less favourable than earlier ones. In the years since the arrival of private oil palm companies in West Kalimantan at the turn of the millennium, land and labour arrangements have changed multiple times (Colchester et al. 2006; Sirait 2009; McCarthy, Vel and Afiff 2012). Land has become an ever more fictitious commodity in the plantations (Polanyi 1944), where the relationship between the plantation owners and the landholders is now described as a 'partnership' (*kemitraan*). The farmers who give up their land to these schemes are regarded as 'shareholders' rather than smallholder farmers, as they had been under the PTP *plasma–inti* scheme. No part of the plantation is actually allocated to the smallholders for farming the oil palm crop, as was the case with the PTP scheme. Once they have signed a contract, farmers give up their right to use the land for the duration of the contract, usually 25 years. They have no say in any production decisions and land management is taken out of their hands (Sirait 2009). They do not do any processing or post-harvest care and they are not involved in the hiring or organising of labour.[19]

As shareholders, smallholders have become alienated from the land and what it produces. Moreover, their share of the profits is calculated based on only 30 per cent of the total area of land acquired by the plantation. Even this is an improvement on the original arrangement, which—until being increased by a district regulation (*perda*) in Bengkayang—had

19 Anyone living in the vicinity can register to work on the plantation; wages were Rp 48,000 (about $4) per day in 2014, rising to Rp 72,000 ($5–6) per day in 2015.

been 20 per cent. The company calculates the farmers' share of profit but this is not done transparently. To standardise the terrain and facilitate planting, the oil palm companies bulldoze rocks, rivers, hills and valleys, and drain swamps and peatlands. The land is emptied of its former sociality as much as it is of its vegetation (Pye and Bhattacharya 2013; Li 2015).

In 2014, the trees planted in MonSingSel had only just reached the stage where they were about to begin producing, and profit shares had not yet been calculated or distributed. Yet, before the first harvests, shareholders around the region began protesting and 'free harvesting' (*panen bebas*) became widespread. Many of these protests derived from the strong smallholder ethos that prevailed among the region's farmers, and that had not been threatened until the global financial crisis sent rubber prices plunging. Most of these disheartened shareholders wanted the oil palm companies to give them their own plots of land, requesting *plasma* plots as they had had under the PTP scheme. The explanation offered by local officials—that the land still belonged to them even though the companies had exclusive land-use rights—only confused the matter.

The agrarian transformations that took place in the wake of agrarian violence in 1967 and then in 1997 created the conditions for allocating private title over land to *pribumi* smallholders, providing them with a degree of independence and status. Ironically, however, this made it easier for large companies to acquire land from those farmers, thereby depriving them of their newly acquired privileges and status, and making them more dependent than ever. Over several decades, the Indonesian state had placed its stamp on the land through state programs, new land categorisations and the making of *pribumi* landholders. Now, just like many other Indonesians, MonSingSel smallholders were being incorporated into industrial-scale land-grabbing schemes, losing their smallholder status and control over land in the process.

The post-crisis gold rush

Gold and small-scale gold mining fared very differently from agriculture during and after the global financial crisis. A spectacular rise in the world price of gold articulated with the crisis in rubber even before oil palm companies had begun planting. Between January 2007 and January 2008, the world price of gold jumped from just over $600 to just over $1,000 per ounce. It fell in January 2009 but recovered quickly; by January 2010 it had reached $1,200 and by January 2012 it remained at a peak reached two months earlier of almost $1,900. A second, more profitable gold rush was on. Even when the price began to decline in January 2013, falling to $1,300 in January 2015, it was still more than double the 2007 price.

Miners were highly motivated to continue digging for gold throughout this period, even though many sources were thinning. The problems in agriculture meant that they had no trouble finding crews.

As with agriculture, control over gold-mining land is tied up with MonSingSel's tumultuous history of violent dispossession, land conflict and land transformation. Like the smallholder land given over to oil palm producers, much of the land where small-scale mining takes place was not inherited from ancestors, but acquired through local migrations, recruitment by the RPKAD and transmigration. Village leaders and ordinary residents in many of MonSingSel's rural areas said in interviews that the people inhabiting those sites (their fellow constituents) were 'all newcomers' (*pendatang semua*)—local or long-distance migrants.

Travelling by motorbike along the poorly maintained roads of Monterado, I counted numerous small mines or attempts at mining on tracts of brushy land; every 30 seconds another one would appear. The largest and longest-running small-scale mining complexes today have Malay–Indonesian sounding names: Gowaboma, Danau Serantangan, Sagatani, Mayasopa. Yet before 1967, and before mechanisation, they largely went by Chinese names. The names of only a few mining complexes are still reminiscent of the pre-Demonstrasi and pre-colonial days: Buduk, Silobat, Lohabang.

The legacies of this region's unique agrarian transformations live on in mining sites in other ways. Crew bosses seek permission to mine from village leaders or landholders, saying they are respecting village territorial boundaries, even though these are new villages, with redrawn boundaries, occupied by many newcomers. Miners say they pay landholders for access to the land 'because they are working in someone's territory' (*karena kerja di kawasan orang*). In the same way that the RPKAD and other soldiers once demanded the payment of 'taxes' from the migrants they had recruited to move onto Chinese land, today's police, army, retired army and civil officials collect taxes from miners and the establishments that serve them. The practice of paying taxes, however illegal or informal they may be, underlies and strengthens the miners' claims to land and the mining rights therein, as well as the informal institutions of control. And while it is possible to consider Ketapang's vast (yet declining) gold-mining areas as being governed by a 'shadow state', as Erman (2007) has argued for tin-mining areas in Bangka, this is not as much the case in MonSingSel.

Mining is a complex activity involving the extraction of resources that cannot be reproduced by human effort (Bridge 2008). The Indonesian state regulates industrial mining, mainly for the tax revenues, but the level of government with the authority to issue permits has changed frequently. The spatial planning efforts of various levels of government are

having an obfuscatory impact on the permitting process (Hendrawan et al. n.d.). District leaders are also of different minds about whether to permit mining: the current mayor of Singkawang has declared a moratorium on mining within city bounds (to almost no effect), while his predecessor facilitated it. Publicly, the media, the government and the police refer to small-scale mining only as 'gold mining without a permit' (*pertambangan emas tanpa izin*, PETI).

The forms of control over land and access to gold-mining areas have changed over time. In the 1990s, at the beginning of the first contemporary gold rush, miners from outside the region and local landowners formed partnerships; some locals learned to mine from these outsiders, invested in equipment such as the Eskade and began to work their own mines. Landholders brought land to the deal while the miners brought dredges to pull out the gold; crew members could be locals or outsiders. Echoing the payments for forest products taken from village territories in the past (Peluso 1992), landholders would get a 10 per cent share of any find, sometimes referred to as a 'tax' (*pajak*). As the level of destruction of the land from mining became clear and gold finds became smaller and scarcer, landowners began charging monthly rental in addition to access fees. Rising gold prices allowed these fees to stay high as long as some gold was found. Some small landowners sold their privately owned plots to the miners, while other landowners in several highly productive mining sites were able to extract very high rents. Thus, miners pay fees to access mining sites, monthly rent to landholders and 'taxes' to village leaders, as well as making informal monthly payments to police, army and civil officials who make the rounds.

Crew bosses regard themselves as smallholders, entrepreneurs and small business owners, even when they are working on credit. The miners often say that the labour and property relations in mining are fairer than those in the plantations. Contrary to the situation in oil palm, labour and gold-sharing transactions are transparent. Gold diggers call themselves 'employees' (*karyawan*), not 'coolies' (*kuli*). Miners get advances on their salaries to leave at home when they agree by verbal 'contract' to work on a crew for three months. In addition to three meals a day and a rough roof over their heads at night, they receive a share of the gold, calculated each workday. As gold has become scarcer and more difficult and dangerous to extract, the terms of work have been adjusted in the labourer's favour. If no gold is found after a certain time, the crew's debts and expenses are absorbed by the crew boss. Shaft mining is more egalitarian: there is no crew boss and each shaft is jointly owned by all crew members. All must be willing to descend into the shaft to dig for ore, and all crew members get an equal share of the find after paying for food, tools and other expenses.

Small-scale mining is a tenuous, dangerous and often short-term activity, though many sites have been producing for a long time. The paradox is that although mining has polluted the land and water with mercury and tailings, it has also produced valuable new forms of smallholder participation in the Indonesian economy. In addition, gold mining has generated capital for even the least well-off miners and diggers. Many of them reinvest their earnings in agricultural production at home, including private oil palm smallholdings, the production of swallows' nests, fruit farms or other kinds of tree crop plantations. Others may use the money to fix up their houses, pay their children's school fees, support ageing parents or help a sibling attend university. Of course, not all are prudent, and gold miners have a well-deserved reputation for throwing away their hard-earned cash. Nevertheless, the income from small-scale mining has generated development effects unavailable to smallholders in other sectors of MonSingSel's rural economy.

CONCLUDING THOUGHTS

Local agrarian histories have become entangled with nationalising and globalising forces in MonSingSel, inflecting the resulting agrarian transformations, including the present one dominated by a combination of oil palm plantations, small-scale gold mines and smallholder farmers struggling to hang on to their livelihoods and lifestyles. Today's plantations and gold mines occupy land transformed by violent interventions of national state forces, widespread land dispossessions and short- and long-distance migrations. State violence emptied the rural lands of Chinese smallholders, although, in some areas, the longstanding good relations between rural Chinese and Dayaks enabled some to return before the central government permitted them to do so. The story of racialised dispossession, exclusion and resurgence is too complex to describe in greater detail here, but must nevertheless be signalled as a unique and important component of the region's agrarian trajectory.

National state actors visited violence on the landscape yet again when they used the national (and colonial) categories of 'state' and 'customary' lands to legitimate the expropriation and reallocation of the tens of thousands of hectares left behind by evicted rural Chinese subjects. One effect of imposing these national land categories was to maintain the fiction that Chinese 'migrants' had disrupted colonial and contemporary imaginaries of 'Indonesia' or the 'Netherlands East Indies', rather than the other way round. This idea was first facilitated by colonial-era land regulations that turned Chinese into 'aliens', even on land they had improved (Li 2007; Hui 2011). Ironically, the colonial state did not recognise the

land improvements or the Dayak heritage of many of its 'Chinese' smallholder subjects, even though these had enabled their acceptance and integration into settled lives of agriculture and mining long before the arrival of Dutch territorial colonialism (Somers-Heidhues 2003). In fact, Dayaks and Chinese had enjoyed a kind of customary coexistence across the MonSingSel landscape, although this could not officially be recognised as such because of the racialisation of the term 'customary' (*adat*). For largely Javanese and Sumatran state actors, it was unimaginable that the term 'customary' could ever be applied to the agrarian practices of Chinese smallholders or labourers, given the racialised politics of the colony and then the nation of Indonesia.

As we have seen, violent state actors orchestrated the resettlement of the emptied areas along racialised lines, through local and long-distance migrations. This was followed by further resettlement schemes devised by the national government, which relocated *pribumi* smallholders from both Kalimantan and other Indonesian islands. The national government developed two smallholder rubber schemes to facilitate the creation of private property rights for both 'local' and 'localised' smallholders. Both schemes led to the widespread development of private property rights over land, though not always through the intended pathways. Moreover, it is worth noting that the lack of 'customary' attachment to the land by the new owners may account for the prevalence of gold mining—which destroys smallholder farming, particularly on productive *sawah*.

Thus, violence and repeated interventions by the national state led to major transformations in who was on the land, how the land was used and how it was distributed and held. Both before and after these episodes of violence, the notion of smallholders had political purchase, even though the composition of West Kalimantan's smallholders frequently changed: from Chinese and people of mixed ethnicity, to 'indigenous' Dayaks and Malays, to 'local' Javanese and Madurese, to transmigrants from other islands. As oil palm companies tried to sell the shareholder concept to smallholders, many of the latter opted, instead, for the new 'smallholder slot' made possible by artisanal and small-scale mining.

The agrarian past continues to affect the agrarian present, but what does the future hold for smallholder sovereignty in MonSingSel, West Kalimantan or Indonesia? It is hard to say, as unexpected outcomes abound. Just as smallholder miners have appropriated land claimed by state entities or corporate plantations and mined it for gold, land that has been mined out or abandoned is being reappropriated by oil palm companies. Companies are buying land emptied of its gold from village leaders who have reclaimed it as the village's customary land, or from private landholders who have recently acquired title to land. The companies send in giant industrial excavators to fill in the pits, then plant heav-

ily fertilised oil palm seedlings. Meanwhile, small-scale miners reinvest their savings in other smallholder or small business pursuits, some re-agrarianising, some migrating back to Java. Categories, like predictions of the future, have their limits.

REFERENCES

Anderson, B. (1983) 'Old state, new society: Indonesia's New Order in comparative historical perspective', *Journal of Asian Studies*, 42(3): 477–96.

Anonymous (1970) 'Penertiban tanah-tanah pengungsi Tjina di Kalimantan Barat' [Securing the land of Chinese refugees in West Kalimantan], *Penyuluh Land Reform*, 10(6): 13–14.

Bernstein, H. (2012) *Class Dynamics of Agrarian Change*, Kumarian Press, London.

Borras, J. and J. Franco (2013) 'Global land grabbing and political reactions "from below"', *Third World Quarterly*, 34(9): 1,723–47.

Bridge, G. (2008) 'Global production networks and the extractive sector: governing resource-based development', *Journal of Economic Geography*, 8: 389–419.

Brookfield, H., L. Potter and Y. Byron (1995) *In Place of the Forest: Environmental and Socio-economic Transformation in Borneo and the Eastern Malay Peninsula,* United Nations University Press, Tokyo.

Carlson, K.M., L.M. Curran, D. Ratnasari, A.M. Pittman, B.S. Soares-Filho, G.P. Asner, S.N. Trigg, D.A. Gaveau, D. Lawrence and H.O. Rodrigues (2012) 'Committed carbon emissions, deforestation, and community land conversion from oil palm plantation expansion in West Kalimantan, Indonesia', *Proceedings of the National Academy of Sciences*, 109(19): 7,559–64.

Casson, A. (2000) 'The hesitant boom: Indonesia's oil palm subsector in an era of economic crisis and political change', Occasional Paper No. 29, Center for International Forestry Research (CIFOR), Bogor.

Cator, W.J. (1936) *The Economic Position of the Chinese in the Netherlands Indies*, University of Chicago Press, Chicago, IL.

Charras, M. (2006) 'Western Kalimantan in development: a regional disappointment', in G. Smith and H. Bouvier (eds) *Communal Conflicts in Kalimantan: Perspectives from the LIPI-CNRS Conflict Studies Program*, CNRS, Paris: 131–69.

Colchester, M., N. Jiwan, Andiko, M. Sirait, A.Y. Firdaus, A. Surambo and H. Pane (2006) *Promised Land. Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Sawit Watch, HuMA and World Agroforestry Centre, Moreton-in-Marsh and Bogor.

Colfer, C.J.P., R.L. Wadley, A. Salim and R.G. Dudley (2000) 'Understanding patterns of resource use and consumption: a prelude to co-management', *Borneo Research Bulletin*, 31: 29–88.

Coppel, C. (1983) *The Indonesian Chinese in Crisis*, Oxford University Press, Oxford.

Davidson, J.S. (2008) *From Rebellion to Riots: Collective Violence on Indonesian Borneo*, University of Wisconsin Press, Madison, WI.

Davidson, J.S. and D. Henley (eds) (2007) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY.

Davidson, J.S. and D. Kammen (2002) 'Indonesia's unknown war and the lineages of violence in West Kalimantan', *Indonesia*, 73: 1–31.

De Koninck, R., S. Bernard and J.F. Bissonnette (eds) (2011) *Borneo Transformed: Agricultural Expansion on the Southeast Asian Frontier*, NUS Press, Singapore.
Dove, M.R. (1985) *Swidden Agriculture in Indonesia*, Mouton, Berlin.
Eilenberg, M. (2014) 'Frontier constellations: agrarian expansion and sovereignty on the Indonesian–Malaysian border', *Journal of Peasant Studies*, 41(2): 157–62.
Erman, E. (2007) 'Deregulation of the tin trade and creation of a local shadow state: a Bangka case study', in H. Schulte Nordholt and G. Klinken (eds) *Renegotiating Boundaries: Local Politics in Post-Soeharto Indonesia*, KITLV Press, Leiden: 177–201.
Farid, H. (2005) 'Indonesia's original sin: mass killings and capitalist expansion, 1965–66', *InterAsia Cultural Studies*, 6(1): 3–16.
Feith, H. (1968) 'Indonesia: Dayak legacy', *Far Eastern Economic Review*, 27 January: 134–5.
Hart, G. (2003) *Disabling Globalization: Places of Power in Post-Apartheid South Africa*, University of California Press, Berkeley and Los Angeles, CA.
Harwell, E. (2000) 'The un-natural history of culture: ethnicity, tradition, and territorial conflicts in West Kalimantan, Indonesia, 1800–1997', PhD thesis, Yale School of Forestry and Environmental Studies, Yale University, New Haven, CT.
Hendrawan, H., I. Radjawali, Hermawansyah and A. Munandar (n.d.) 'Aktor dan sentralitas: analisis jaringan tata kelola hutan dan lahan di propinsi Kalimantan Barat, Indonesia' [Actor and centrality: an analysis of land and forest management networks in West Kalimantan province, Indonesia], Swandiri Institute, Pontianak.
Hui, Y.F. (2011) *Strangers at Home: History and Subjectivity among the Chinese Communities of West Kalimantan, Indonesia*, Brill, Leiden and Boston, MA.
ILO (International Labour Organization) (2004) 'Child labor in the informal mining sector in East Kalimantan', International Programme on the Elimination of Child Labour (IPEC), ILO, Jakarta.
Jackson, J.C. (1970) *Chinese in the West Borneo Goldfields: A Study in Cultural Geography*, Occasional Papers in Geography, University of Hull Publications, Hull.
Kelly, A. and N.L. Peluso (2015) 'Frontiers of commodification: state lands and their formalization', *Society and Natural Resources*, 28(5): 473–95.
King, V. (1993) *The Peoples of Borneo,* Blackwell, Oxford, UK, and Cambridge, MA.
Lahiri-Dutt, K. (2004) 'Informality in mineral resource management in Asia: raising questions relating to community economies and sustainable development', *Natural Resources Forum*, 28(2): 128–32.
Li, T.M. (2007) *The Will to Improve*, Duke University Press, Raleigh, NC.
Li, T.M. (2015) 'Social impacts of oil palm in Indonesia: a gendered perspective from West Kalimantan', Occasional Paper No. 124, Center for International Forestry Research (CIFOR), Bogor.
Lucas, A. and C. Warren (2003) 'The state, the people, and their mediators: the struggle over agrarian law reform in post-Suharto Indonesia', *Indonesia*, 76: 87–126.
Lucas, A. and C. Warren (2013) *Land for the People: The State and Agrarian Conflict in Indonesia,* Ohio University Press, Athens, OH.
Mackie, J.A.C. (1974) *Konfrontasi: The Indonesia–Malaysia Dispute 1963–1966*, Oxford University Press, Kuala Lumpur.
Maimunah (2014) 'Coal mining in East Kalimantan', Sajogyo Institute, Bogor.
Mayer, J. and B. Suratmoko (2000) 'The underlying causes and impacts of fires in South-east Asia: fire and landscape in Sanggau, West Kalimantan, Indonesia', Center for International Forestry Research (CIFOR), Bogor.

McCarthy, J.F. (2013) 'Tenure and transformation in Central Kalimantan: after the "million hectare" project', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia,* Ohio University Press, Athens, OH: 183–214.

McCarthy J.F. and R. Cramb (2009) 'Policy narratives, landholder engagement and oil palm expansion on the Malaysian and Indonesian frontiers', *Geographical Journal*, 175(2): 112–23.

McCarthy, J.F., P. Gillespie and Z. Zen (2012) 'Swimming upstream: local Indonesian production networks in "globalized" palm oil production', *World Development*, 40(3): 555–69.

McCarthy, J.F., J.A.C. Vel and S. Afiff (2012) 'Trajectories of land acquisition and enclosure: development schemes, virtual land grabs, and green acquisitions in Indonesia's outer islands', *Journal of Peasant Studies*, 39(2): 521–49.

Padoch, C. and N.L. Peluso (2006) *Borneo in Transition: People, Forests, Conservation, and Development*, Oxford University Press, Kuala Lumpur.

Peluso, N.L. (1992) 'The political ecology of extraction and extractive reserves in East Kalimantan, Indonesia', *Development and Change*, 23(4): 49–74.

Peluso, N.L. (2008) 'A political ecology of violence and territory in West Kalimantan', *Asia Pacific Viewpoint*, 49(1): 48–67.

Peluso, N.L. (2009) 'Rubber erasures, producing rights: making racialized territories in West Kalimantan, Indonesia', *Development and Change*, 40(1): 47–80.

Peluso, N.L. (2015) 'The gold farmers', New Mandala website, Australian National University, Canberra, 17 July. Available at http://asiapacific.anu.edu.au/newmandala/2015/07/17/the-gold-farmers/

Peluso, N.L. and E. Harwell (2001) 'Territory, custom, and the cultural politics of ethnic war in West Kalimantan, Indonesia', in N.L. Peluso and M. Watts (eds) *Violent Environments*, Cornell University Press, Ithaca, NY: 83–116.

Peluso, N.L. and C. Lund (eds) (2011) 'New frontiers of land control', *Special Issue: Journal of Peasant Studies*, 38(4).

Peluso N.L. and P. Vandergeest (2011) 'Political ecologies of war and forests: counterinsurgencies and the making of national natures', *Annals of the Association of American Geographers*, 101(3): 587–608.

Penot, E. (1995) 'Taking the "jungle" out of the rubber: improving rubber in Indonesian agroforestry systems', *Agroforestry Today*, July–December: 11–13.

Pichler, M. (2015) 'Legal dispossession: state strategies and selectivities in the expansion of Indonesian palm oil and agrofuel production', *Development and Change*, 46(3): 508–33.

Pilin, M. (2014) 'Hak masyarakat adat di kawasan hutan: faktual dan pembelajaran di Kalimantan Barat' [The rights of indigenous peoples in the forest: facts and studies in West Kalimantan], paper presented at a conference on Hak Masyarakat Hukum Adat dalam Kawasan Hutan Pasca Putusan MK 35/PUU-X/2012 [The Rights of Customary Peoples in the Forest after Constitutional Court Decision 35/PUU-X/2012], Universitas Tanjung Pura, Pontianak, 30 September.

Polanyi, K. (1944) *The Great Transformation: The Political and Economic Origins of Our Time*, Beacon Press, Boston, MA.

Potter, L. (2011) 'Agrarian transitions in Kalimantan: characteristics, limitations and accommodations', in R. de Koninck, S. Bernard and J.F. Bissonnette (eds) *Borneo Transformed: Agricultural Expansion on the Southeast Asian Frontier*, NUS Press, Singapore: 152–202.

Potter, L. (2015) 'Managing oil palm landscapes: a seven-country survey of the modern palm oil industry in Southeast Asia, Latin America and West

Africa', Occasional Paper No. 122, Center for International Forestry Research (CIFOR), Bogor.
Potter, L. and S. Badcock (2007) 'Can Indonesia's complex agroforests survive globalisation and decentralisation? Sanggau district, West Kalimantan', in J. Connell and E. Waddell (eds) *Environment, Development and Change in Rural Asia-Pacific: Between Local and Global*, Routledge Pacific Rim Geographies, London and New York, NY: 167–85.
Poulgrain, G. (1998) *The Genesis of Konfrontasi: Malaysia, Brunei, Indonesia 1945–1965*, Crawford Publishing House, Bathurst, and C. Hurst and Co., London.
Putra, N.A. and S. Djuweng (1999) *Sisi Gelap Kalimantan Barat: Perseteruan Etnis Dayak–Madura 1997* [The Dark Side of West Kalimantan: The Dayak–Madurese Ethnic Conflict of 1997], ISAI and Institut Dayakology, Pontianak.
Pye, O. and B. Bhattacharya (2013) *The Oil Palm Controversy in Southeast Asia: A Transnational Perspective*, Institute of Southeast Asian Studies, Singapore.
Rachman, N.R. (1999) *Petani dan Penguasa: Dinamika Perjalanan Politik Agraria Indonesia* [Peasants and the Powerful: Dynamics of Agrarian Politics in Indonesia], INSIST Press, KPA and Pustaka Pelajar, Yogyakarta.
Resosudarmo, B. (2005) *The Politics and Economics of Indonesia's Natural Resources*, Institute of Southeast Asian Studies, Singapore.
Rigg, J. (2015) *Challenging Southeast Asian Development: The Shadows of Success*, Routledge, London and New York, NY.
Sirait, M. (2009) 'Indigenous peoples and oil palm expansion in West Kalimantan, Indonesia', report commissioned by the Faculty of Law, University of Amsterdam, Amsterdam.
Soelistijo, U.W., B. Santoso and T. Suseno (2014) 'An eye-bird view of facing scarcity of gold mining in Indonesia', *Journal of Applied Science and Research*, 2(1): 11–29.
Soemadi (1974) *Peranan Kalimantan Barat dalam Menghadapi Subversi Komunis Asia Tenggara* [The Role of West Kalimantan in Facing Communist Subversion in Southeast Asia], Yayasan Tanjungpura, Pontianak.
Somers-Heidhues, M. (2003) *Gold-diggers, Farmers, and Traders in the 'Chinese Districts' of West Kalimantan, Indonesia*, Southeast Asia Program Publications, Ithaca, NY.
Stoler, A.L. (1985) *Capitalism and Confrontation in Sumatra's Plantation Belt, 1870–1979*, Yale University Press, New Haven, CT and London.
Suryadinata, L. (1978) *Pribumi Indonesians, the Chinese Minority, and China: A Study of Perceptions and Policies*, Heinemann Educational Books Asia, Kuala Lumpur.
Trouillot, M. (1991) 'Anthropology and the savage slot: the poetics and politics of otherness', in R.G. Fox (ed.) *Recapturing Anthropology: Working in the Present*, School of American Research Press, Santa Fe, NM: 17–44.
Wadley, R.L. (2003) 'Lines in the forest: internal territorialization and local accommodation in West Kalimantan, Indonesia (1865–1979)', *South East Asia Research*, 11(1): 91–112.
Ward, M. and R. Ward (1974) 'An economic survey of West Kalimantan', *Bulletin of Indonesian Economic Studies*, 10(3): 26–53.
Yuan, B.L. (2000) *Chinese Democracies: A Study of the Kongsis of West Borneo (1776–1884)*, KITLV Press, Leiden.

3 Indonesian land law: integration at last? And for whom?

Adriaan Bedner

As in most developing countries, land tenure relations in Indonesia are contentious. The many transitions involving land use—from agriculture to industry, from rural villages to urban neighbourhoods, from subsistence farming to plantations—exert heavy pressure on social relations. The contributions to this volume provide vivid accounts of this; whether they concern infrastructure development, housing, oil palm regimes, agricultural change or mining, they demonstrate that changes to land use are often accompanied by conflict, violence, forced migration and other types of misery. While in the past many areas still knew a frontier that could act as a safety valve, today in many regions the limits of usable land have been reached and this route of escape has been closed off (Li 2010).

In all land disputes, law is in some way a focus of contention. This may be about legal interpretation within the parameters set by the law, or about achieving legal change in order to create more favourable conditions for particular groups of citizens. Legal interpretation is central to negotiations between parties to a conflict, in court judgments or in forums of complaint such as the National Commission for Human Rights or the Ombudsman. Achieving legal change concerns legislative processes at different levels, but also the promotion of novel judicial interpretation. For many years the Indonesian judiciary hardly played a role in legal evolution, as it lacked the institutional devices to turn legal interpretation in single cases into a judicial doctrine (Pompe 2005; Bedner 2013).

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However, the establishment of Indonesia's Constitutional Court in 2003 in combination with the accessibility and acceptance of legal sources of international and transnational origin has changed this.

How Indonesia's legal system is coping with the current pressures and how it influences land disputes are important matters. The key question for lawyers is whether the system provides a coherent framework for authoritative resolution of land disputes. According to most of the literature, the answer to this question is 'no'. Little of what has been written about Indonesian land law is positive or hopeful—in that respect not much has changed from colonial times to the present (see Chapter 10 by van der Eng). Land law has been called complex, inconsistent, fragmented, unfair and out of touch with reality (Lindsey 1998; Fitzpatrick 2006; Daryono 2010; Srinivas et al. 2015), and international donors have called for 'a comprehensive overhaul' (USAID n.d.: 1).

This chapter will examine whether Indonesian land law is indeed in such bad shape. It will ask whether its plural nature produces legal insecurity only, and whether recent changes have improved its capacity to generate fair outcomes for poor and vulnerable groups. The analysis will be limited to major issues and developments. The chapter starts with a brief overview of developments in land law since Indonesian independence, taking as its point of departure the six dualities characterising the Netherlands Indies' land law inheritance.[1] Then it will turn to more recent developments and prospects. Its conclusion is that the many problems notwithstanding, Indonesian land law is inching towards integration.

THE BASIC AGRARIAN LAW

When Indonesia became independent, the colonial land law system it inherited was characterised by six dualities:

1 'free state domain'[2] versus land encumbered by European and customary (*adat*) rights;
2 land subject to European law (registered) versus land subject to *adat* law;
3 *adat* land registered for tax purposes versus non-registered *adat* land;
4 land subject to public policy regulations on how to use it (including spatial planning) versus land not subject to such regulations;
5 forest land versus non-forest land; and

1 An important limitation is that I will not address mining law.

2 Free state domain refers to land unencumbered by any rights, which the state could freely dispose of. The assumption that the state has this power is built on the notion of sovereignty and is referred to as the domain principle.

6 land dispute adjudication in European courts versus land dispute adjudication in courts for Indonesians (both state and *adat* courts).

The duality of courts disappeared soon after the transfer of sovereignty: the *adat* courts were abolished in 1949 and replaced by the state court system the Japanese had already unified. This meant that land disputes were no longer formally adjudicated in different forums. Apart from this, land law hardly changed during the 1950s.

By contrast, land *use* altered dramatically. Many Dutch plantations had been occupied by locals during the revolution and were never returned to the original owners. Similarly, forest areas considered part of the state domain were occupied and developed for dwellings and subsistence farming. Instability in rural areas, caused by insurgencies such as Darul Islam in West Java, Sulawesi and Aceh, drove thousands of peasants to the relative safety of the cities. The government was forced to condone squatting on a large scale, both on state domain and on land left behind by Dutch repatriates. As a result, an increasing discrepancy evolved between the actual land-use situation, the official rules and the state registration system.

In 1960 land law was radically transformed. Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) replaced the Civil Code provisions on land rights, but unlike the Civil Code (which was valid for 'European', registered land only) it was meant to apply to all of the land in Indonesia. Article 5 of the Basic Agrarian Law claims that the statute is based in *adat* law, but in fact it introduced a system of western land rights under new Indonesian labels. The *adat* communal right of avail (*hak ulayat*) was recognised only under strict conditions. *Adat* law communities (*masyarakat hukum adat*) had to prove their existence, which meant showing that they were still following traditions and living under the authority of *adat* institutions. The right of avail could, moreover, never be used against the 'state interest' (article 3), nor could it be registered.[3]

The colonial domain principle was replaced by the state right of control (*hak menguasai*), which reinforced the already dominant position of the state in land management. The intent of the law was, through registration, to transform all existing land rights—no matter whether they were European or *adat* rights—into rights derived from the Basic Agrarian Law (BAL rights) (article 19). The government could also issue a

3 The right of avail was no longer considered an original right, but one deriving from—or granted by—the state (article 2(4)). In other words, the state no longer recognised the autonomy implicit in the idea that an *adat* community's authority to avail of land actually preceded the establishment of state sovereignty. For a discussion of the Basic Agrarian Law, see Fitzpatrick (1997) and Slaats et al. (2009).

new BAL right on state land (article 28). The state thus assumed two functions: first, as a recorder of existing private rights, and second, as a creator of rights that it could hand out more or less at will. The second function gave the government a key role in determining land use, through the types of rights it provided (for example, a right to build or a right to establish a plantation). In this manner it could actively promote public policies on land use through private law.

By limiting the right of avail and by granting the government the authority to create new rights, the Basic Agrarian Law reinforced the state's position in land management. Protection of poor Indonesians against dispossession was no longer to be guaranteed by an *adat* law community's autonomy and its right of avail, but by limits on the amount of land a person could hold (articles 7 and 17), the obligation in principle to use the land oneself (article 10) and the obligation on the state to guarantee the 'social function' of land (article 6, further elaborated in articles 11(2) and 13). Article 9 stipulated that only Indonesian nationals could hold full rights (*hubungan yang sepenuhnya*) to land.

The implementation of the Basic Agrarian Law suffered many problems (Lindsey 1998; Slaats et al. 2009; Daryono 2010). As the key to the transformation in land rights was registration, the fact that in November 2014 only 48.61 per cent of all non-forest land parcels had been registered (BPN 2014: 6) says enough. Individual registration has always been costly (Reerink 2012: 96–7), and government campaigns to secure mass registrations, such as the National Land Registration Project (Proyek Operasi Nasional Agraria, PRONA), have not brought the extensive change intended (see Chapter 8 by Hudalah). Land registration moreover 'apparently did not appeal to the masses' (Slaats et al. 2009: 520).

In the colonial era, the two major land categories were land registered under European title and non-registered *adat* land. Now a third category grew tremendously: non-registered, occupied (or squatted) land. Conversely, the amount of non-registered *adat* land decreased as a result of the more stringent requirements for recognition of the right of avail in the Basic Agrarian Law, and through processes of enclosure.

The colonial system also acknowledged a category of individually owned *adat* land, whose ownership was proven by land-rent receipts. The intent of the Basic Agrarian Law was to replace these receipts as proof of title with land certificates. The latter were provided on the basis of full registration. In practice, however, the land-rent receipts continued to play an important role in land transactions. This was partly due to the unwillingness or inability of landowners to register their land, but the practice was also upheld by the courts: in case of land disputes courts continued to admit colonial land-rent receipts as counter-evidence against title based on official land certificates provided after registration. Registration thus did not provide full proof of ownership.

A similar practice arose in urban areas, which reinforced the tenure of those holding occupied land. Municipal governments started to provide basic services to such settlements and in return demanded the payment of land and building tax (*pajak bumi dan bangunan*, PBB). Although PBB receipts explicitly stipulated that they were *not* proof of ownership, in practice they played an important role in local land transactions, often in combination with a letter of land clarification (*surat keterangan tanah*, SKT) or an equivalent document from the local neighbourhood head (Reerink 2012: 105). That in some cases they also provided tenure security against dispossession by the government was another indication of their importance.[4]

As a result, the following categories of land outside forest areas could now be distinguished:

- land registered under the Basic Agrarian Law;
- individual *adat* land with a tax receipt and/or SKT;
- unregistered *adat* land (individual or communal);
- occupied land with a tax receipt and/or SKT ('administratively registered', occupied land); and
- unregistered occupied land.

In summary, the unification of private law intended by the Basic Agrarian Law had only limited success, as in their everyday lives Indonesians continued to rely on different categories of legitimation for land use. The duality between registered, statutory titles and individual rights based on *adat* law continued to exist. In rural areas in Java and Madura, such individual *adat* rights could be proven by land-rent certificates and an SKT from the village head, and in the outer islands by SKT only. In urban areas, the category of 'long-period' squatted land expanded enormously, and the PBB receipts played a similar evidentiary role to the old Dutch land-rent certificates when local citizens engaged in land transactions.

Under the New Order, dispossession became a major issue. By extending the scope of state land, the Basic Agrarian Law enabled the government to allocate large areas to developers and plantation companies. The limitations the law placed on the right of avail assisted the government in legitimising its dispossessory projects (Fitzpatrick 1997: 203). The same applied to land in urban areas, where the absence from

4 In his research on dispossession of *kampung* residents in Bandung, Reerink (2012) found that there was hardly any difference in the compensation paid to those who had officially registered their land and those who had only a PBB receipt plus a declaration (SKT) by the neighbourhood head that the land was being used by that particular landholder.

the Basic Agrarian Law of an article sustaining adverse possession[5] in the case of occupied urban land had the same effect. In other words, no title could be obtained by those who had occupied state land in an urban setting for an extended period, even if no one had tried to reclaim the land during this period.[6] Moreover, Law 51/1960 on the Prohibition on Using Land without the Permission of the Owner or Owner's Representative explicitly prohibited the use of land without a title. It empowered the government to remove the 'occupants' (articles 4 and 5) and even to use criminal law against them (article 6).

Of course, one should not overstate the effects in practice of the changes brought by the Basic Agrarian Law and its implementing statutes. In notorious cases, such as forced relocation without proper compensation in the context of building the Kedung Ombo Dam (Fitzpatrick 1997: 196–9), the New Order government unscrupulously broke the protecting clauses contained in the Basic Agrarian Law and its implementing regulations.[7] On the other hand, the overall picture for Indonesia indicates that the government completely failed to remove the large majority of illegal occupants from their dwellings. Altogether the system was characterised by discretion, with the government only partly willing and able to rule by law, but in a position where it could invoke the law whenever it deemed this expedient. The decline of the judiciary's power, and of 'law as a system' more generally, eroded the institutional capacity to challenge arbitrariness. Nevertheless, from time to time the courts ruled against the government and protective clauses provided a rallying point for advocacy (Pompe 2005: Ch. 4). Likewise, when public discontent increased, the regime was sometimes prepared to make

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5 Adverse possession refers to the legal mechanism of gaining title to land by the actual continuous possession of it to the exclusion of others (including its 'true owner') for the period of time prescribed by law.

6 Article 1,963 of the Civil Code stipulated a period of 30 years of holding land 'in good faith' to acquire ownership, but this provision was abolished by the Basic Agrarian Law. Article 24(2) of Government Regulation 24/1997 (re)-introduced a term of 20 years of undisturbed physical control of land as a basis for recognition of a right to land, but only in the context of land under the 'old' rights system. Unlike the Civil Code provision, therefore, this does not seem applicable to 'squatters'.

7 The most common procedure under the New Order until about the mid-1990s was the so-called *pembebasan tanah* (literally, 'setting land free'). Officially, it allowed those whose land was designated for a project in the public interest to refuse the offer, but in practice military pressure made such a refusal impossible. In this manner the government was able to avoid using the official expropriation law (Law 20/1961 on Revocation of Rights to Land and Objects on the Land), which would at least have given dispossessed landholders the ability to appeal to a judge in order to get access to a fair level of compensation (see, for example, Bedner 2001).

legal changes. For instance, when the dispossessory practices of the New Order for 'public interest' projects such as golf courses and shopping malls led to growing dissatisfaction, Suharto issued Presidential Decree 33/1995 to put a halt to the most egregious excesses (Bedner 2001: 155).

SPATIAL PLANNING AND FOREST AREAS

A harmonised system of public and private rights to land requires that land titles be aligned with the spatial planning system. It took Indonesia much longer to enact a new spatial planning law than to enact the Basic Agrarian Law. Until the promulgation of Law 24/1992 on Spatial Planning (the 1992 Spatial Planning Law), the spatial planning system for urban areas was based on the Dutch Town Planning Ordinance of 1948, which was implemented (to a limited extent) only from 1976.[8] The new law extended spatial planning to the entire territory of Indonesia and provided an ambitious plan for an integrated, hierarchical, top-down planning system from the centre to the districts. Sectoral planning was to be integrated into the new system.

The main problem turned out to be the difficulty of creating sufficiently detailed spatial plans that assigned particular activities to different zones (for housing, green areas, industry and so on). In part this was because the Spatial Planning Law did not carry any procedural regulations, and in part because the national government produced a true national spatial plan only in 2008, when the 1992 Spatial Planning Law had already been replaced (Moeliono 2011: 90, fn 259). Provinces and districts were moreover excluded from the planning process for special zones (*kawasan tertentu*).[9] In most cases zoning was unclear, and different maps were used by different government departments; therefore, even if a spatial plan was in place, land rights could hardly be harmonised with it. In most cases, however, there was no spatial plan and the government officials responsible for providing permits held broad discretionary powers. Informed by (economic) development planning rather than spatial planning, these officials determined spatial use (Moeliono 2011: 312).

The most serious anomaly was that the Ministry of Forestry resisted submitting its planning authority to provincial or district scrutiny and

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8 Moeliono (2011: 72–84) describes how the New Order turned the decentralised Dutch system into a centralised system of sectoral development planning. The 1992 Spatial Planning Law was meant to bring unity to this centralised, sectoral approach.

9 This mainly concerned special economic zones (or 'bonded zones'): areas assigned by the government for industrial activities that produced goods for export only and that were exempted from the common tax regime.

managed to stay out of the Spatial Planning Law scheme. This helped to continue the most notorious duality in Indonesian land law: the distinction between forest and non-forest land. During the early years of the New Order, the ministry's claim that the land under its jurisdiction was part of the state domain, even when it was claimed as *adat* territory, was seriously contested by other ministries. However, in its competition with the Land Department (at that time part of the Ministry of Home Affairs), the Ministry of Forestry managed to maintain its jurisdiction over all forest lands by removing them from the application of the Basic Agrarian Law through administrative regulation. This was in clear contravention of the law, but politics appeared stronger than statutory principles. As a consequence BAL rights could only be issued in non-forest areas.

If the forest area (*kawasan hutan*) claimed by the Ministry of Forestry had been limited to areas truly intended to remain forested, this would not have been much of a problem. However, during the 1960s the ministry started a process of forest designation that came to encompass almost 70 per cent of Indonesia's land mass. This move was stimulated by the New Order's efforts to exploit Indonesia's forests in order to supplement the state's income from oil. While the forestry minister held no power to provide BAL rights, he did have the power to provide logging concessions or certain plantation permits. This easy way of rewarding loyal military officers after they had retired and of garnering support from influential businesspeople was attractive to the Suharto regime, and the timber trade became an important pillar of the New Order (Broad 1995: 323–6).

The Ministry of Forestry showed as little inclination to recognise the right of avail as the Ministry of Agrarian Affairs and issued large timber concessions on land claimed by *adat* law communities. Some former timber concessions were rezoned for conversion to plantations or to serve the government's transmigration programs. Over time very large areas were brought under the administration of the Ministry of Agrarian Affairs, but most areas that lost their forest cover remained under the Ministry of Forestry's jurisdiction. As the Ministry of Forestry was unable to actually control this huge territory, many people continued living in these areas, using them for agriculture or other purposes. Many others joined them. Thus, the existing duality between forest and non-forest land expanded to include non-forested versus forested areas zoned as forest estate.

The only duality from colonial times that had been abolished was revived in a new form. The unification of the court system in land matters was undone in 1991, when a separate system of administrative courts became operative. The new courts found that their jurisdiction extended to deciding whether the National Land Agency (Badan Pertanahan Nasional, BPN), residing under the Ministry of Agrarian Affairs, had

issued land certificates in a lawful manner. This might have gone well if they had limited themselves to looking at the administrative aspects of the BPN procedure, such as undue delay of a decision, but they began to address the underlying civil-law aspects of such claims. As a result, conflicting judgments from different jurisdictions arose in single cases and undermined the legal certainty the courts should provide (Bedner 2001: 169–70).

This development, of deciding cases under different legal regimes, became still worse when criminal law entered the land law web. In many cases lawyers took their clients' land law disputes to the police, claiming fraud or corruption, and police, public prosecutors and judges often appeared willing to take on such cases. A case might then run simultaneously in civil, criminal, administrative and bankruptcy proceedings, with no guarantee that judges would pay attention to what their colleagues were doing. As a result, the courts were no longer an institution Indonesians could expect to resolve the tensions resulting from pluralities in the land law system.

In summary, on the eve of the post-Suharto (*reformasi*) era, land law was considerably more complex than at the time Indonesia gained its independence. The following dualities more or less remained:

- 'free state domain' versus land encumbered by BAL and *adat* rights;
- *adat* land with administrative registration versus non-registered *adat* land; and
- land subject to public policy regulations (including planning) versus land not subject to such regulations.

The following changes occurred:

- the categories of land subject to the Basic Agrarian Law (registered) versus land subject to traditional (*adat*) rights were supplemented by two new categories: non-registered, occupied land and 'administratively registered', occupied land (often referred to as semi-formal land tenure);
- the distinction between forest and non-forest areas was complicated by the rise of the distinction between 'non-forested' versus 'forested' forest areas; and
- land dispute adjudication became fragmented into civil, administrative and criminal proceedings.

CHANGES DURING THE *REFORMASI* PERIOD

After the start of *reformasi*, resistance to the New Order's politics of dispossession spread quickly. Many farmers occupied the lands they

claimed had been stolen from them, and land relations generally became a target for reform. In 2001 the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR) adopted MPR Decree IX/MPR/2001, which called for land law reform that promoted social justice. The decree stipulated a set of principles that should inform such reform and reinforced the pro-poor land activists' discursive repertoire in debates on land policy and practice.

Some land disputes were resolved, but many continued. An important shift was that claims to land were increasingly made under the banner of *adat* (Davidson and Henley 2007: 12–13). In response, 39 years after the Basic Agrarian Law was enacted, the minister of agrarian affairs finally promulgated a regulation recognising *adat* law communities (Minister of Agrarian Affairs Regulation 5/1999). This ministerial regulation defined the procedure for dealing with a community's request for recognition as an *adat* law community. In line with the new decentralisation laws (Law 22/1999 on Regional Government and Law 25/1999 on the Fiscal Balance between the Central Government and the Regions), the power of recognition was given to the districts. An investigation by an external party (a university or research institute) was required to assess whether the applicants still retained the required *adat* institutions and whether they depended on the land concerned for their subsistence. These requirements turned out to be difficult to meet and until it was replaced in 2015 only five groups were recognised under this regulation.[10]

Land acquisition

A few years after Suharto stepped down, the economy picked up and developers started looking for land once again. Many requests for acquisition in rural areas concerned land for oil palm plantations (see Chapter 14 by Potter), but when under the Megawati administration (2001–04) and the Yudhoyono administration (2004–14) infrastructure development gained priority, the need for an effective land acquisition regime that could be used by the state itself became pressing (see Chapter 7 by Davidson). The attempts to accelerate the existing procedures by putting strict timeframes in place (under Presidential Decrees 36/2005 and 65/2006) did not produce the effects desired, and eventually all of the

10 They were the Kampar in Riau (Kampar District Regulation 12/1999), the Baduy in Banten (Lebak District Regulation 32/2001), the Lundayeh and another Dayak group in East Kalimantan (Nunukan District Regulations 3/2004 and 4/2004) and another Dayak group in East Kalimantan (Malinau District Regulation 10/2012). I am most grateful to R. Yando Zakaria for letting me use his compilation of data on recognition.

existing regulations were replaced by Law 2/2012 on Land Acquisition for Development in the Public Interest (the Land Acquisition Law).

This statute is a major step forward compared to the pre-existing legal framework. It defines in a clear manner which state institutions may exercise eminent domain powers (article 1); the projects (in the public interest) this may serve (article 11); the procedure to be followed, including conformity with the spatial plan (article 14(2)) and public consultation with stakeholders (article 19)); who qualifies for compensation (article 40); and finally, how to calculate the amount of compensation (through an independent land valuator) (articles 31 and 32). The decision of the government to nominate a particular area for acquisition can be contested at the administrative court (article 23) and the amount of compensation can be challenged at the civil court (article 38).[11]

Most significant is that a broad range of land users are now entitled to receive compensation.[12] The elucidation to article 40 provides a non-exhaustive list, which next to BAL right holders and *adat* law communities refers to owners of a management right to land (*hak pengelolaan*), usufruct beneficiaries of land owned by an Islamic foundation (*wakaf*), owners of former *adat* land,[13] parties who control state land in good faith, parties who have a basis for controlling the land[14] and owners of buildings, crops or crops connected to the land.[15] The most far-reaching change is the introduction of this final category as qualifying for compensation. These owners may prove their status through a declaration of physical control (*surat pernyataan penguasaan fisik*, SPPF)—most probably an equivalent of the earlier mentioned SKT. This means that many squatters who have used state land without challenge for a considerable period of time have come closer to a legal right to compensation.

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11 The statute of limitations for both types of claim is very short (30 days after a decision is published in the former case and 14 days after negotiations break down in the latter case), which may turn out to be a considerable obstacle in practice. I am grateful to Santy Kouwagam for pointing this out to me.

12 This is already visible in the definition of 'parties who have a right' (*pihak yang berhak*) to compensation, to comprise 'parties who control or own the land acquisition object' (*pihak yang menguasai atau memiliki obyek pengadaan tanah*) (articles 1–3).

13 This refers to those who have not (yet) converted their *adat* rights into BAL rights (through registration).

14 This refers, for instance, to those who have bought a plot under a BAL title but have not yet registered the transaction. This category is limited in its scope.

15 These categories are defined in articles 18–26 of Presidential Regulation 71/2012.

The Land Acquisition Law thus signifies a step towards recognition of adverse possession.[16]

Despite these achievements, the Land Acquisition Law has been severely criticised by land activists. Immediately after the law was passed, in June 2012, anti-land-grabbing coalition Karam Tanah challenged a number of its provisions before the Constitutional Court. The law allows land to be acquired for 'public interest' projects such as tollroads, harbours and railways. However, Karam Tanah argued that the law did not serve the public interest because investors and other elites would benefit far more from these projects than the poor. It also claimed that the Land Acquisition Law failed to define the concepts of 'public interest', 'development interest' and 'general interest'.

The Constitutional Court rejected these challenges (Decision 50/PUU-X/2012). The judges held that facilities such as tollroads were of indirect benefit to poor people by promoting rapidity of transport. Furthermore, the government had not sold out to private parties, but had reserved the right to determine tariffs (p. 45). On the other point, the judges responded that the contested concepts could be defined in implementing regulations (p. 144). Two other cases that challenged the fairness of the land acquisition procedure were also rejected.[17]

Spatial planning in non-forest and forest areas

Despite efforts under the New Order to establish a system of spatial planning, huge discrepancies between plans—if in place—and the actual use of space remained. The decentralisation laws of 1999 added to the problems by creating a decentralised government structure that was hard to reconcile with the centralised planning system of the 1992 Spatial

16 Bakker and Reerink (2015: 88) are slightly less optimistic; they point to the fact that an *adat* law community needs to be recognised before it can qualify for compensation. If an *adat* community is using the land, however, it may qualify under one of the other categories. Moreover, it seems that the requirements for recognition of an *adat* community are shifting, which opens up new possibilities. I discuss this below.

17 Constitutional Court Decisions 42/PUU-XII/2014 and 88/PUU-XII/2014. Bakker and Reerink (2015: 88) point out that companies that are 51 per cent owned by the state can apply for land acquisition. This creates the danger that the land will be used for private projects, particularly if the official target is *kampung* restructuring. Once developed, such land could be used for luxury estates, even if such an interpretation would clearly violate both the system and the tenor of the law. This would also be in violation of Indonesia's obligations under the International Covenant on Economic, Social and Cultural Rights.

Planning Law. For a few years a system of decentralised planning started to develop, with regional governments using spatial planning as a tool to gain control over natural resources (Moeliono 2011: 139–43). Soon the central government started to attempt to regain its powers, which led to a regulatory mismatch and overlapping competences. To resolve this situation, the new Spatial Planning Law enacted in 2007, Law 26/2007, clearly re-established the primacy of the central government in spatial planning.

Under the 2007 Spatial Planning Law, the earlier mentioned problems of unclear zoning and the determination of the actual rules at the level of permit provision have not been resolved—with a few exceptions. Notably, Surabaya and Jakarta have started to use spatial planning as an ordering tool. Their efforts have raised considerable resistance from locals who face eviction from the areas they have inhabited for many years. While he was mayor of Jakarta, Joko Widodo was fairly effective in resolving these situations, but recent attempts by his successor, Basuki Tjahaja Purnama (Ahok), to return green zones to their official purpose have proceeded less smoothly (Elyda and Wardhani 2015).

A special role for spatial planning concerns the delineation between forest and non-forest areas. The Ministry of Forestry had unilaterally designated almost 70 per cent of Indonesia's land mass as forest but had never clearly marked those forests' borders. To resolve disputes with provincial governments about forest boundaries, in 2002 the ministry started to bring its forest plans into conformity with the spatial plans of the provinces and districts through a process known as 'harmonisation' (*paduserasi*). This has been a useful attempt to bring clarity to the legal status of land across different levels and sectors of government, but at the same time it has involved contests of power. The program had a slow start: by 2009 only 11.29 per cent of the designated area had been gazetted as forest area (Safitri and Nagara 2015: 2).[18] Three resource-rich provinces (Central Kalimantan, Riau and Riau Islands) refused to collaborate in view of the extraordinary extent of the Ministry of Forestry's claims. Central Kalimantan eventually struck a compromise after the ministry agreed to reduce its claim from 90 per cent to 82 per cent of the province's land area, mainly by relinquishing land already in use for plantations or housing (Gellert and Andiko 2015: 651–2). Such contests over forest areas have not been limited to spatial planning issues, as we will see next.

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18 According to article 15 of Law 41/1999 on Forestry, the full process of gazettement (*pengukuhan*) consists of four stages: (1) designation (*penunjukan*), (2) border demarcation (*penataan batas*), (3) mapping (*pemetaan*) and (4) assessment (*penetapan*).

Forest law

Since the start of *reformasi*, the pressure on the Ministry of Forestry to relinquish some of its territory has increased, but the resistance of the ministry has been considerable. Moreover, Law 41/1999 on Forestry (the 1999 Forestry Law) bolstered the ministry's position vis-à-vis the provinces and districts, which had just been empowered by the new decentralisation laws. Provinces and districts could provide some small logging concessions and the Ministry of Forestry conducted a few experiments with community forestry (Safitri 2010), but that was about as far as it was prepared to go.

Given the lack of effective control the Ministry of Forestry wields, it is hardly surprising that parallel land administration systems have emerged in what, according to the ministry, is forest area. Disputes between the Ministry of Forestry and the Ministry of Agrarian Affairs first emerged during the New Order, concerning land rights provided by the latter on territory claimed by the former. Simultaneously, new systems promoting land tenure security in forest areas emerged. Just as we saw with non-registered non-forest area, tax receipts were used to support land transactions and village heads started to provide SKTs to villagers to prove control of what, according to the Ministry of Forestry, was forest area (Simarmata 2012: 61). The link with the formal system in this situation was more tenuous than in non-forest areas, because formalising such rights was possible only after the Ministry of Forestry had relinquished its claim to the land concerned.

Since 2011, the Ministry of Forestry has faced a few legal setbacks in upholding its claims. This is due in considerable part to the Constitutional Court, which has ruled against the ministry in several cases. The first case concerned a claim brought in 2011 by five district heads and a businessman, all from Central Kalimantan. The plaintiffs challenged the Ministry of Forestry's view that designating (rather than gazetting) land as forest area (*kawasan hutan*) was sufficient to bring it under the control of the ministry. Behind their claim was the wish of the districts to continue providing (small) logging or other licences over land not yet gazetted, and to ensure that the licences already provided could not be overruled by the ministry. The court found in favour of the plaintiffs (Constitutional Court Decision 45/PUU-IX/2011). It held article 1(3) of Law 41/1999 on Forestry (as twice amended) to be inconsistent with article 15 of the same law and hence in contravention of article 28D(1) of the constitution (which guarantees legal protection and certainty). Only if the full process of gazettement of an area had been completed could this land be labelled as forest area. According to the court the contested article 1(3) must now read: 'Forest areas are areas assessed (*ditetapkan*) by the government to be maintained as permanent forest'.

In the short run this ruling had far-reaching legal consequences. It reduced the area of Indonesia claimed by the Ministry of Forestry from almost 70 per cent to a mere 14 per cent of the country's land mass, and deprived the ministry of its jurisdiction to issue concessions or licences in the ungazetted areas. This drove the ministry to unprecedented activity. Demonstrating how determined Indonesian government institutions can be when vital interests are at stake, within two years the Ministry of Forestry had managed to gazette almost 60 per cent of the land that thus far it had only designated (Safitri and Nagara 2015: 2). The longer-term consequences of the judgment are therefore limited.

A more serious problem the Ministry of Forestry has had to face is that in many parts of Indonesia there is not much forest left and that its oldest source of income—granting logging concessions—is no longer as lucrative as it used to be. The ministry is also able to grant tree plantation concessions in industrial plantation forest (*hutan tanaman industri*, HTI), but it misses out on the real money, which is in oil palm.[19] In 2011 this prompted the ministry to a bold move. Oil palms, it argued, were trees and trees constitute forest, so in fact the Ministry of Forestry would be the correct government body to provide permits for oil palm plantations. On the basis of this logic, the minister issued Minister of Forestry Regulation 62/2011, which removed the need to convert forest area into BAL land when an oil palm plantation was established.[20] This would allow the ministry to profit directly and sustainably from the oil palm boom.

It soon became apparent that for once the Ministry of Forestry had overplayed its hand. The decision elicited a strong reaction from environmental groups and very likely also from other ministers and regional governments. According to Gellert and Andiko (2015: 657), a significant factor in the minister's decision to revoke the regulation was the $1 billion deal the government had struck the year before with the Norwegian government under the REDD+ scheme. In that situation, turning forest

19 See Gellert and Andiko (2015: 655), who state that 'in the worst case scenario, the Ministry of Forestry would be left managing the environmental sustainability of the required 30 per cent of forest-covered area in each province while all of the available conversion forest would have been released from *kawasan hutan* for other uses'.

20 Gellert and Andiko (2015: 655) point out that forest areas were in fact already full of oil palm plantations at that time, as district heads had provided the companies with licences without bothering about the status of the forest. I would argue that this development was legally supported by the Constitutional Court ruling that the Ministry of Forestry had no jurisdiction over areas that had only been designated as forest. In other words, it may very well have been the case that the district heads were acting in conformity with the law.

land into plantations and continuing to call it forest was probably not a proper signal.[21]

A second important ruling of the Constitutional Court was Decision 35/PUU-X/2012. The claim, brought by indigenous rights group AMAN and the *adat* communities of the Kuntu from Riau and the Kasepuhan Cisitu from Banten, mainly concerned the provision in Law 41/1999 on Forestry (article 1(6)) that customary forest (*hutan adat*) was state forest (*hutan negara*). In this case the judges decided that the fact that the law treated *adat* law communities differently from other right holders was discriminatory and created legal uncertainty. Therefore, *adat* forest should be put on a par with private forest (that is, forest under private title).

In response to the ruling, AMAN's secretary-general, Abdon Nababan, proclaimed that 'about 40 million indigenous people are now the rightful owners of their customary forests' (Witoelar 2013). However, such euphoria seems to somewhat underestimate the difficulty of being recognised as an *adat* law community. The Constitutional Court refused to invalidate another clause (article 5(2)) that limits claims for *adat* forest to those groups who 'in reality still exist and whose presence has been recognised' (s*epanjang menurut kenyataannya masih ada dan diakui keberadaannya*). This means that any recognition of a land claim must be preceded by recognition as an *adat* law community. And, as already mentioned, in 2015 only five groups had managed to gain such recognition on the basis of Minister of Agrarian Affairs Regulation 5/1999.

But even if a community succeeds in being recognised, the gains are not fully clear. The Constitutional Court has determined that private forest is not 'privately owned state forest', yet this does not mean that the Ministry of Forestry loses its spatial planning powers over the land concerned. Importantly, the ministry can no longer grant concessions to logging companies, but it can certainly set limits to the use the 'new' owners may make of their authority.

The Ministry of Forestry itself seems not to be aware of this advantage, as apparently it has not fully understood the purport of this judgment. Minister of Forestry Regulations 62/2013 and 43/2014 still stipulate that forest area (*kawasan hutan*) consists only of state forest (*hutan negara*).

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21 The reasons the minister of forestry gave for his U-turn were that the regulation would be at odds with other rules and regulations (in which he was correct), and that he had signed the regulation before it was 'ready'. It should be noted that the present regime still allows for crops such as rubber, cocoa and coconut to be planted in forest area, under permits to operate in either industrial plantation forest (HTI) or community plantation forest (*hutan tanaman rakyat*) (Minister of Environment and Forestry Regulation 12/2015, appendix (under 2) and Minister of Forestry Regulation 31/2013, article 7).

This is *not* what the Constitutional Court ruling implied: that forest area consists of both state forest and private forest. The ministry therefore wrongly assumes that it should remove *adat* and other private forest from its forest area (Safitri and Nagara 2015: 10). The point of the Constitutional Court's ruling was precisely that there is no need for this.

Latest developments: towards integration at last?

During the past two years the government has taken some important steps to resolve problems arising from the fragmentation of land law. These initiatives concern forest land, the recognition of communal rights and the management of urban land. The overall trend seems to be to bring land law into conformity with land use rather than the other way round.

In the field of forestry, the first development is Joint Ministerial Regulation 79/2014 of the Ministers of Home Affairs, Forestry and Public Works and the Head of the National Land Agency on Procedures for Settling Control of Land within the Forest Zone. It is a remarkable regulation, most of all because for the first time in history all of the agencies involved in aspects of land management have issued a regulation together.[22] While that will not undo the siloism so characteristic of Indonesian government, it certainly is a notable step.

The regulation refers to the Constitutional Court judgments discussed above and to another one that ordered the government to respect the rights of communities in forest areas (Constitutional Court Decision 34/PUU-IX/2011). It builds on an earlier agreement between 12 departments, dated 11 March 2013, to speed up the procedure for forest gazettement. The regulation gives the central role for the clarification of land status to the district governments, not the Ministry of Forestry. It provides for the establishment of investigative teams—the Team Listing the Control, Ownership, Use and Utilisation of Land (Tim Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah, IP4T)—to consist of ministry as well as district, subdistrict and village representatives, under the chair of BPN's district branch office head.

The IP4T teams deal with requests for recognition of land or land-use rights, allowing different forms of evidence, including the declaration of physical control (SPPF) mentioned earlier in the context of the Land Acquisition Law. If an applicant fails to meet the 20-year use threshold, he or she may still qualify for a right to land in the framework of the land reform rules and regulations (article 8(2)). If he or she still does not qual-

22 According to forest law specialist Yance Arizona, the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) played a key role in persuading the agencies to cooperate (email to author dated 27 November 2015).

ify, a land right may be granted on the basis of the measures to empower (*memberdayakan*) forest communities (article 8(3)). A positive decision of an IP4T team will be sent to the Ministry of Forestry (now the Ministry of Environment and Forestry), where the director-general of forest planning will examine the file and issue a decision of change of boundary of a forest area (*surat keputusan perubahan batas kawasan hutan*) (article 13). This change is to be incorporated into the district's spatial plan (articles 14–17). It remains to be seen how the joint ministerial regulation will be implemented, but at least it harmonises existing procedures between the departments involved in land-use management, it holds promise for harmonising forest and non-forest planning, and it has the potential to bring planning into conformity with actual use.

Another regulation is even more groundbreaking. In response to Constitutional Court Decision 35/PUU-X/2012, the minister of agrarian affairs and spatial planning replaced Minister of Agrarian Affairs Regulation 5/1999 on the recognition of *adat* law communities with Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015.[23] Its revolutionary nature lies in the introduction of the term 'communal right' (*hak komunal*), which encompasses more than just the right of avail. First, article 1.1 explicitly defines the communal right as a 'collective right of ownership' (*hak milik bersama*), whereas the previous regulation referred only to the 'authority […] to use'. Unlike the right of avail, a communal right can be registered (article 13(2)).[24] Second, the communal right is not limited to *adat* law communities, but can be requested by any community that has subsisted on the land for 10 years or more. This means that the endless efforts to 'prove' that one's group still has an *adat* structure and is tied to the land in specific, traditional ways is no longer necessary (article 5(2b)).[25]

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23 It is not immediately obvious why the minister decided to do this, since the Constitutional Court judgment was specifically about the Forestry Law and hence not directly relevant to the BAL land administered by the Ministry of Agrarian Affairs and Spatial Planning.

24 Soemardjono (2015) points out that the regulation is problematic because the communal right has no explicit statutory basis. Moreover, the right of avail is of a mixed private and public character (meaning that it includes the right to spatial plannning), whereas the communal right is merely a private property right. This means that the right of avail cannot simply be subsumed under the broader category of communal right. I think that both points are correct and that the Basic Agrarian Law should be adapted accordingly.

25 Evidence of some form of community life is required; in the words of article 5(2d), the applicant must show that 'social and economic activities take place that are integrated with the community's way of life' (*terdapat kegiatan sosial dan ekonomi yang terintegrasi dengan kehidupan masyarakat*). That should not be too difficult to prove.

In a way, the regulation can be seen as a pre-emptive strike against the Ministry of Environment and Forestry. It explicitly refers to 'communities residing in forest areas or on plantation land'. Plantation land falls under the jurisdiction of the Minister of Agrarian Affairs and Spatial Planning, but forest areas do not. Still, the regulation includes communities in forest areas within its scope and determines that they should be awarded a communal right (article 3(2)). The regulation then provides a procedure for removing this land from the control of the Ministry of Environment and Forestry (see article 10(1) in particular). The tricky part for the ministry is that it is only able to get involved after the investigative team (on which it is not represented) has established that a community is entitled to the land concerned. The procedure is initiated by the community itself, which addresses the district head or—in the case of land located in more than one district—the provincial governor.

There is only one significant difference between an *adat* law community and a 'subsistence' community after they have obtained the communal right: the former can collaborate with a third party in using the land (article 14), whereas the latter must use the land by itself (article 15). This opens the possibility for a third party to continue using land under a right provided before or after recognition of an *adat* law community (for example, for a plantation). Article 17(c) confirms that rights of use remain valid (*sah*), which can be interpreted as rights of use remaining valid under the new communal right. This is a huge step forward, since under Minister of Agrarian Affairs Regulation 5/1999 (article 3) it was not possible to recognise the right of avail to such land.

The new regulation is silent on the question of whether an *adat* law community whose right of avail to a piece of land used by a third party is recognised can demand payment for the use of its land. What seems to be certain, however, is that the land must be returned to the community after the lease has expired. Any other interpretation would go flatly against the system of the law.

A third major development is the new Village Law (Law 6/2014), which replaces Law 5/1979. Its particular significance for land law is that it opens up the possibility for villages to become '*adat* villages' and thus to (re)gain control of their land under the right of avail—subject to the limitations mentioned in the previous paragraph. The decision to recognise a village as an *adat* village is taken by the district government (article 98(1)), but the initiative must come from the village itself (article 100(1)).[26] From a land law perspective the key provision is article 103(b),

26 The process thus differs from the 'return to the *nagari*' in West Sumatra, where all villages in the province were part of a collective change (Vel and Bedner 2015: 505).

which gives an *adat* village the authority to regulate and manage its *adat* territory.

A careful reading of the 2014 Village Law indicates that the intention of its drafters was to confer flexibility on the *adat* concept that had hitherto been absent and allow a wider range of communities to be recognised as *adat* law communities than was previously the case (Zakaria and Simarmata 2015). The key provision is article 97, which holds that an *adat* village requires an *adat* law community whose traditional rights are still alive, whether territorially, genealogically or functionally. This requirement must be interpreted in the light of the 'development of the community', which is explained as being 'based on the valid laws as a reflection of the development of values that are considered ideal in present-day society'.[27] In other words, an *adat* law community may consist of 'modern' citizens. In addition, a 'feeling of togetherness as a group' is required, which should not be too difficult to prove either. Such an interpretation comes very close to recognising any community availing of a territory as an *adat* law community.[28]

What is not entirely clear is how the new Village Law relates to the other regulations on the recognition of *adat* law communities. Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 refers to the Village Law and is—at least in part—an implementing regulation for recognising the *adat* land belonging to an *adat* village. However, its criteria for recognising an *adat* law community are stricter than those in the Village Law. Zakaria (forthcoming: 5–9) has pointed out that the five pieces of legislation concerning this issue (the Village Law, Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015, Minister of Home Affairs Regulation 52/2014, Minister of Environment and Forestry Regulation 32/2015 and Joint Ministerial Regulation 79/2014) all have different criteria for recognising an *adat* law community. If the new draft land law is adopted, this would add yet another one. The Village Law offers by far the easiest route, but if indeed Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 is considered as its implementing regulation, this advantage is removed.

Finally, a new draft land law has been published and at the time of writing (November 2015) is under discussion. It will not replace the Basic

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27 The original is: '*keberadaannya telah diakui berdasarkan undang-undang yang berlaku sebagai pencerminan perkembangan nilai yang dianggap ideal dalam masyarakat dewasa ini*'.

28 These requirements can be interpreted in a more critical manner; see Vel and Bedner (2015: 503–4). In a comment on this chapter, John McCarthy also seemed sceptical of the likelihood that this provision would be interpreted in a flexible manner given the present 'rigidity' of the concept of an *adat* law community.

Agrarian Law, but act as a supplement. The introduction states that the pursuit of economic growth has led to 'wrong interpretations' of the Basic Agrarian Law and that the new statute means to address this. Explicit reference is made to the pro-poor, pro-disadvantaged MPR Decree IX/MPR/2001.

If the draft land law were adopted in its present form, it would indeed reinforce the position of those whose land tenure is threatened. This would be realised through a set of measures aimed at countering land grabbing. Article 15(3) prohibits land speculation, while article 15(2) places an obligation on the government to limit landholdings to ensure the 'equalising (*pemerataan*) of control and ownership to the availability of usable land (*kawasan budidaya*) in each district'. Most important is that the bill sets maximum limits on the area of land that can be authorised for use under a right to construct or use buildings (*hak guna bangunan*, HGB) (200 hectares for housing and industries, 100 hectares for hotels and resorts, article 31(1)), and under the equally important plantation right (*hak guna usaha*, HGU) (for large enterprises, 50,000 hectares within Indonesia, article 27(4)).[29] Land rights fall due when land is not used (article 40(1e)); access to public space cannot be limited, even if it is managed by a private party (article 18(2)); and finally, all major land rights are reserved for Indonesians (articles 21 and 25).[30]

The proposed statute also suggests reviving the program of land reform. The government has the obligation to provide land for this purpose (article 41(1)). Such land may include 'free state land', forest land that can be converted, former mining areas and so on (article 41(2)). The process should be led by BPN, in conformity with the spatial plan (article 43(1) read in conjunction with article 41(3)). The bill presents a considerable number of requirements to make sure that land intended for land reform is not used for other purposes (articles 46–48).

Article 3 clarifies the meaning of the state's right to control land. It puts beyond doubt that, rather than being a property right, it is a right to regulate and enforce the rules applying to the use of land. It explicitly requires the state to ensure that types of land rights are in conformity with the spatial plan. It also codifies and defines the management right (*hak pengelolaan*), which was developed under the Basic Agrarian Law as

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29 I have no doubt that legal loopholes would be found to dodge this obligation, but it does provide a legal argument for those resisting land grabbing in particular cases.

30 The enforcement of these provisions will obviously be very hard given the current level of demand for land. For some examples of land speculation, see McCarthy, Vel and Afiff (2012: 531–3).

a tool to exercise the right to control land, and which had no clear statutory basis (article 5).[31]

The bill defines the main titles to land listed in the Basic Agrarian Law and limits their number to five (articles 19–38). It also resolves important questions, such as whether lesser titles on freehold property can be provided (they can: see article 20(2)). Article 39 gives a clear statutory basis to the use of buildings above and below the ground (that is, apartments and basements), codifying rules that so far have only been part of lower-level regulations.

The bill also contains a number of provisions that bring land law into closer conformity with informal or semi-formal practices. According to the Basic Agrarian Law and its implementing legislation, all individual *adat* titles had to be registered within 25 years, but this was not achieved. As a result these titles were still recognised in practice, but their legal status had become ambivalent. Article 22(2) of the draft land law now provides freehold property title to those who, on the basis of *adat* law, have an individual right to land. Another measure intended to bring legal resolution to a practical problem is the creation of a limited rule of adverse possession to land that the petitioner has used in good faith for at least 20 years (articles 22(4)) and 51(5)), a formulation also found in Presidential Regulation 71/2012. Likewise, the bill contains a procedure to make sure that land titles are brought into conformity with spatial planning (article 40(1h) read in conjunction with article 40(2c)).

In contrast to this pragmatic approach, the bill continues one line of the wishful thinking that has been so characteristic of much land policy planning: according to article 51(1) the government will register all land titles within five years. So far it has taken more than 50 years to register 48.61 per cent of the total number of land parcels. On the other hand, the process of registering land titles has accelerated considerably over the past few years; from 2010 to 2014, BPN managed to register more than 2 per cent of all land parcels (BPN 2014: 20). If it manages to keep working at this pace it should be able to finish within 25 years.

While one may relegate the five-year provision to the realm of innocent ideals, another proposal in the land bill is truly problematic. Even if its apparent intention of resolving land law fragmentation is valid, the proposed land court (articles 60–94) will dangerously complicate the resolution of land disputes.

First, land courts will not resolve any of the problems of conflicting jurisdictions that presently hinder the resolution of land disputes. The administrative court will not lose its power to decide on BPN decisions

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31 This right can be passed on to a private party who is in the process of developing a project that will eventually lead to land titling (article 5(2b)).

and there will be no bar to bringing criminal cases involving land issues to the general court.[32] This undermines the hope that the land courts can accumulate knowledge through specialisation, as they will not be dealing with land law cases in all of their aspects.

Second, the bill proposes establishing land courts at the provincial level only, as a special section to the district court in each provincial capital (article 61). This means that the number of district courts plaintiffs can bring their cases to drops from about 500 to 33 only. This is likely to be a serious obstacle for many citizens, as the courts may be located hundreds of miles away from where they live. The judges will, moreover, be less knowledgeable about local conditions and local law, which in land cases play an important role. The set-up of the land courts will thus severely reduce access to justice. The idea to speed up procedures by skipping the appeals process and providing straight access to cassation at the Supreme Court seems not particularly helpful either, as this body is already overloaded.

In summary, the land bill contains many good ideas, but the land court is not among them.

CONCLUSION

While there is no denying that Indonesian land law is complex, positive change is possible. On the contrary, during the past few years a number of developments have speeded up legislative processes to bring land law into better conformity with itself and with the reality of land use. The Land Acquisition Law is a good example of a statute that brings clarity to the procedure for dispossession. If adopted in its present form, the land bill will also remove many disparities at a legal level, for instance by providing a definition of rights whose meaning has so far never been clarified. More importantly, it will provide a statutory basis for some rights that exist in practice but are only defined in lower legislation.

This sense of realism has helped to strengthen the position of those who presently hold no formal rights to land. The first steps have been taken towards recognition of adverse possession and the incorporation of administrative evidence of land title into the formal legal system in the case of de facto land tenure. A true breakthrough has been the recognition of groups other than *adat* law communities as being entitled

32 Constitutional Court Decision 55/PUU-VIII/2010-2011 stipulates that a civil dispute should be decided before a case can be taken to the criminal court (Arizona 2014: 253–5). In practice, however, this ruling is not followed by the general courts.

to a communal right. The future will tell whether this will be the most effective way of protecting communal rights or rather the extension of the *adat* community concept as suggested by the Village Law. Given how decades of anti-*adat* politics have shaped the legal meaning of the concept of an *adat* law community, to me the odds seem against *adat*.

These processes have been supported by the Constitutional Court and by the relentless pressure from non-government organisations on the government to make adjustments to the legal framework. The particular importance of the Constitutional Court is that Indonesia finally has a court that produces law that applies beyond the individual case at hand. By contrast, the continued use of split jurisdictions in land disputes, which will not be resolved by the proposed land court, poses a major obstacle to further realistic progress of land law. This puts a heavy responsibility on legislative change.

I would argue that the core of the problem with land law in Indonesia is not the complexity of its rules, but rather the way in which the institutions responsible for the operation of the rules open the door to evasion and abuse. In particular, the bureaucratic competition within the state and the absence of a judiciary that is able to remove the legal uncertainties surrounding land law are problematic. Nonetheless, if economic interests are not pervasive and power disparities are not too large, the system is developing rather well. For instance, land tax receipts have created a new category of ownership that has proven sufficiently resilient to reduce the importance of land registration. In this case integration of different normative systems—state law and social practices relying on administrative procedures—actually works for the poor, although not for the poorest.

However, forms of integration of land law that do not take sufficient account of current patterns of land use, and the ways in which they actually help the poor, may work *against* poor and vulnerable groups. The present complexity of Indonesian land law makes it difficult and costly for investors to navigate the system for land acquisition and thus reinforces the position of land dwellers without formal title. Furthermore, the lack of clarity on the status of land opens up opportunities for those without formal title to contest ownership. The combination of a democratic space, NGO land rights advocacy and the need for investors to acquire documentation to land—meaning that they cannot just come and take it—has worked in the favour of many poor and vulnerable groups. This seems seldom to be noticed by those institutions that promote rapid land registration as the key solution to all land tenure problems.

If the Indonesian state proceeds along the road suggested by the land bill, the Spatial Planning Law and the new regulations on forestry—which is to build on the land-use rules in practice and to lessen

bureaucratic siloism—in the long run Indonesian land law is bound for integration. For whom this will be most advantageous is difficult to predict. In the short term, however, Indonesian land law will continue to offer few guarantees for less conflict.

REFERENCES

Arizona, Y. (2014) *Konstitusionalisme Agraria* [Agrarian Constitutionalism], STPN Press, Yogyakarta.

Bakker, L. and G. Reerink (2015) 'Indonesia's Land Acquisition Law', in C. Carter and A. Harding (eds) *Land Grabs in Asia: What Role for the Law?* Routledge, Oxon: 83–99.

Bedner, A. (2001) *Administrative Courts in Indonesia: A Socio-legal Study*, Kluwer Law International, The Hague.

Bedner, A. (2013) 'Indonesian legal scholarship and jurisprudence as an obstacle for transplanting legal institutions', *Hague Journal on the Rule of Law*, 5(2): 253–73.

BPN (Badan Pertanahan Nasional) (2014) 'Laporan kinerja 2014' [Performance report 2014], National Land Agency (BPN), Jakarta.

Broad, R. (1995) 'The political economy of natural resources: case studies of the Indonesian and Philippine forest sectors', *Journal of Developing Areas*, 29(3): 317–40.

Daryono (2010) 'Transformation of land rights in Indonesia: a mixed private and public law model', *Pacific Rim Law and Policy Journal*, 19(3): 417–57.

Davidson, J.S. and D. Henley (eds) (2007) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, Oxon.

Elyda, C. and D.A. Wardhani (2015) 'Eviction proceeds despite requests for talks', *Jakarta Post*, 21 August.

Fitzpatrick, D. (1997) 'Disputes and pluralism in modern Indonesian land law', *Yale Journal of International Law*, 22: 171–212.

Fitzpatrick, D. (2006) 'Private law and public power: tangled threads in Indonesian land regulation', in H. Schulte Nordholt and I. Hoogeboom (eds) *Indonesian Transitions*, Pustaka Pelajar, Yogyakarta: 75–114.

Gellert, P. and Andiko (2015) 'The quest for legal certainty and the reorganization of power: struggles over forest law, permits, and rights in Indonesia', *Journal of Asian Studies*, 74(3): 639–66.

Li, T.M. (2010) 'To make live or let die? Rural dispossession and the protection of surplus populations', *Antipode*, 41(1): 66–93.

Lindsey, T. (1998) 'Square pegs & round holes: fitting modern title into traditional societies in Indonesia', *Pacific Rim Law and Policy Journal*, 7: 699–719.

McCarthy, J.F., J.A.C. Vel and S. Afiff (2012) 'Trajectories of land acquisition and enclosure: development schemes, virtual land grabs, and green acquisitions in Indonesia's outer islands', *Journal of Peasant Studies*, 39(2): 521–49.

Moeliono, T.P. (2011) 'Spatial management in Indonesia: from planning to implementation. Cases from West Java and Bandung: a socio-legal study', doctoral dissertation, Van Vollenhoven Institute, Faculty of Law, Leiden University, Leiden.

Pompe, S. (2005) *The Indonesian Supreme Court: A Study of Institutional Collapse*, Southeast Asia Program Publications, Ithaca, NY.

Reerink, G. (2012) *Tenure Security for Indonesia's Urban Poor: A Socio-legal Study on Land, Decentralisation and the Rule of Law in Bandung*, Leiden University Press, Leiden.

Safitri, M. (2010) *Forest Tenure in Indonesia: The Socio-legal Challenges of Securing Communities' Rights*, Leiden University Press, Leiden.

Safitri, M. and Nagara (2015) 'Mendesaknya kaji ulang peraturan: pokok-pokok pikiran untuk perbaikan regulasi pengukuhan kawasan hutan di Indonesia' [The need to review the regulations: basic ideas to improve the regulation of gazettement of forest area in Indonesia], policy paper, Epistema Institute, Jakarta.

Simarmata, R. (2012) *Indonesian Law and Reality in the Delta: A Socio-legal Inquiry into Laws, Local Bureaucrats and Natural Resources Management in the Mahakam Delta, East Kalimantan*, Leiden University Press, Leiden.

Slaats, H., E. Rajagukguk, N. Elmiyah and A. Safik (2009) 'Land law in Indonesia', in J. Ubink, A. Hoekema and W. Assies (eds) *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*, Leiden University Press, Leiden: 493–526.

Soemardjono, M. (2015) 'Ihwal hak komunal atas tanah' [The matter of the communal right to land], *Kompas*, 6 July: 6.

Srinivas, S., K. Clifford Bell, K. Toha, A. Zaenal and W. Collier (2015) 'A review of Indonesian land-based sectors with particular reference to land governance and political economy', paper presented at the Annual World Bank Conference on Land and Poverty, World Bank, Washington, DC, 23–27 March.

USAID (United States Agency for International Development) (n.d.) 'USAID country profile. Property rights and resource governance: Indonesia', USAID.

Vel, J.A.C. and A.W. Bedner (2015) 'Decentralisation and village governance in Indonesia: the return to the *nagari* and the 2014 Village Law', *Journal of Legal Pluralism and Unofficial Law*, 47(3): 493–507.

Witoelar, W. (2013) 'INSIGHT: restoring forest rights restores sense of nationhood', *Jakarta Post*, 5 June.

Zakaria, R.Y. (forthcoming) '"Too much law will kill you!" Dinamika pembaruan hukum pengakuan hak-hak masyarakat adat pasca-reformasi' [The dynamics of legal renewal of the recognition of *adat* communities post-*reformasi*].

Zakaria, R.Y. and R. Simarmata (2015) 'Mempromosikan program inklusi sosial dan pembangunan yang inklusif melalui upaya optimalisasi Undang-Undang Nomor 6 Tahun 2014 tentang Desa' [Promoting the program for social inclusion and inclusive development by optimising Law 6/2014 on Villages], draft report for the Indonesian and Australian governments, June–August.

PART 2

Environmental and customary framing of land tenure

4 Emerging options for the recognition and protection of indigenous community rights in Indonesia

Chip Fay and Ho-Ming So Denduangrudee

Indonesia marked its seventieth anniversary as a nation in August 2015, although those 70 years are but a moment in the history of the archipelago. During the short period in which it has been a unified nation, Indonesia has undergone dramatic transformation—from charismatic leadership in a politically chaotic landscape in the 1950s and early 1960s, to 32 years of authoritarian rule in the period to 1998, to one of the world's largest and most vibrant democracies. Yet, while the Indonesian state has matured politically, fundamental challenges of equity and social justice remain. Estimates place the proportion of Indonesians living below or just over the poverty line at around 40 per cent (World Bank 2015), while conflicts over land ownership and access to natural resources continue to rise (Komnas HAM 2015).

The year 2015 also marked the fiftieth anniversary of the start of the anti-communist massacres of the mid-1960s, which still haunt Indonesia today. Despite growing calls from many Indonesians for accountability and reconciliation, it is clear that, 50 years on, those in a position to lead this process remain reluctant to take steps to come to terms with the enormity of what happened during that period.[1] The multi-decade struggle

Chip Fay is a legal and policy adviser to the Indigenous Peoples Alliance of the Archipelago (AMAN) and Ho-Ming So Denduangrudee is an associate at the Samdhana Institute. The views expressed in this article do not necessarily reflect those of either AMAN or the Samdhana Institute.

1 On 1 October 2015, President Widodo explicitly said he had no intention of making a public apology to the victims' families (Parlina and Sundaryani 2015).

of indigenous communities in Indonesia to gain recognition of their collective rights, and the reluctance of the state to act on their demands, may well be a central legacy of this time.

While Indonesia's founding constitution has socialist leanings, reflected particularly in the way land is regulated, and although Law 5/1960 on Basic Agrarian Principles contains numerous provisions to promote equity and social welfare, there is perhaps no other democracy in the world that has done so little to actually recognise and provide land rights and natural resource security to its people. Currently, only a fraction of Indonesia's 180-million-hectare land base is titled, making the securing of land for local people and indigenous communities a central component of Indonesia's unfinished social equity agenda.[2]

The national government awards formal land titles exclusively to individuals, even though Indonesian society is largely grounded in collective (though not always egalitarian) forms of enterprise and governance. The irony of resource allocation during Suharto's 32 years of military rule was that Indonesia's socialist origins were used to justify the control of the state over the allocation of access to natural resources and to restrict access to a privileged few. During this period, Indonesia's military, political and business elites benefited broadly from a concession system that gave them access to (but not ownership of) land, timber and minerals, all at the expense of many thousands of local communities whose rights and needs were ignored. This legacy continues to be felt today in the form of widespread conflict between local communities, the companies who hold the concessions and the state.

This chapter provides an overview of Indonesia's efforts to address the fundamental challenge of equity in land and natural resource allocation. It focuses on the many communities who self-identify as being indigenous to their ancestral territories and who seek collective recognition and protection of their territorial rights. The measures the government takes to provide equity will have far-reaching implications for Indonesia's international commitments to reduce land-based greenhouse gas emissions, for rural incomes and livelihoods, and for land-related conflicts between communities, companies and government. To achieve

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2 Data on the total area of land held under formal title are not available; the National Land Agency (Badan Pertanahan Nasional, BPN) provides information on the number of individual parcels of land but not on the total spatial area (hectares) of those plots as a percentage of the land base. In addition to formal titling procedures (which do not come close to meeting demand), numerous informal, community-based tenure instruments operate throughout Indonesia. These are sometimes used to provide evidence of occupation, as the basis for the assessment of land and building tax (*pajak bumi dan bangunan*, PBB) and to support applications to BPN for formal registration of a title.

the best possible outcome, the Indonesian government needs to take a three-fold approach that includes full recognition of indigenous peoples' rights, legal and administrative securing of those rights and proactive protection of those rights.

The chapter has three main sections. First, it examines the national legal framework for the recognition of indigenous peoples' rights, beginning with the definition of 'indigenous peoples' in the Indonesian context. Next, it provides a brief overview of the development of Indonesia's leading indigenous rights organisation, the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN). Finally, it describes several significant legal and political milestones in the struggle to achieve collective territorial rights recognition for indigenous peoples, paying particular attention to regulatory developments during the last term of President Susilo Bambang Yudhoyono and the first term of President Joko Widodo.

NATIONAL LEGAL FRAMEWORK FOR RECOGNITION

Definition of Indonesia's indigenous peoples

Indonesia is a signatory to the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Though non-binding, this declaration is the most detailed and powerful international statement on the rights of indigenous peoples to self-determination within their territories, and to full protection under national and international law. Nevertheless, in Indonesia as in many countries, the definition of 'indigenous peoples' is not straightforward. Unlike in the settler colonies (in the Americas, Australia and New Zealand) where the dominant colonial populations continue to be present and to dominate economically and politically in the post-colonial period, Asia and Africa have developed post-colonial native constructs with centralised political systems that form the foundation of a dominant nation state. As a result, Indonesia's central government is able to claim that all Indonesian citizens are indigenous to the archipelago. Many indigenous communities, activists and organisations, as well as legal scholars, actively oppose this notion (AMAN 2015). The heart of their argument is that, while nearly all Indonesian citizens are native to the archipelago, those Indonesian communities that self-identify as collective entities, operate under customary law within a defined territory and actively protect their rights to their traditional laws and customs can be considered to be indigenous peoples under both Indonesian and international law. Perhaps most importantly, it is indigenous peoples' pursuit of collective and non-alienable land rights that distinguishes them from other local communities in Indonesia.

In 1977, the World Council of Indigenous Peoples passed a resolution stating that only indigenous peoples could define indigenous peoples. Since that time, self-identification has been the dominant approach in international law and among indigenous peoples' federations. Neither the Declaration on the Rights of Indigenous Peoples nor related conventions of the International Labour Organization (ILO) attempts to provide a legal definition of 'indigenous peoples'.

In 1997, after than more than a decade of contestation, the Philippines passed the Indigenous Peoples Rights Act, with its comprehensive definition of 'indigenous peoples':

> Indigenous Cultural Communities/Indigenous Peoples—refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as [an] organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. [Indigenous Cultural Communities/Indigenous Peoples] shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains (Indigenous Peoples Rights Act of the Philippines, Chapter II(h)).

Unlike the Philippines, where the legal system uses English, Indonesia has been able to avoid the definitional issues associated with the term 'indigenous peoples' in the English-speaking world by using the Indonesian term *masyarakat adat* (customary community) in many of its laws and regulations. Another term used in several key Indonesian laws is *hak ulayat*, denoting a communal or collective right. First described by Dutch social scientists in the early twentieth century,[3] *hak ulayat* is gaining attention among legal scholars and advocates because it concerns rights

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3 Prominent Dutch scholars include Cornelis van Vollenhoven (1874–1933), who wrote *De Ontdekking van het Adatrecht* [The Discovery of *Adat* Law], and Barend ter Haar Bzn (1892–1941), the author of *Hukum Adat dalam Polemik Ilmiah* [*Adat* Law in Scientific Polemics]. Later, the German scholar Franz von Benda-Beckman (1941–2013) made a significant contribution in identifying and detailing traditional social and political frameworks in Indonesia and was a leading force in understanding the importance of legal pluralism.

that go beyond the control of land to include governance and natural resource management—especially the allocation of resources among the community—within a customary (*adat*) community's territorial boundaries, or what the Philippine legislation calls 'ancestral domain'.

Apart from *masyarakat adat* and *hak ulayat*, Indonesian law has used various other terms to refer to indigenous peoples, such as *suku terasing* (alien tribal community), *masyarakat tertinggal* (neglected community), *masyarakat terpencil* (remote community) and *masyarakat hukum adat* (customary law community). At its founding congress in 1999, AMAN decided to use the term *masyarakat adat* to refer to indigenous peoples in Indonesia. AMAN chose this term because it does not have the connotations of backwardness or primitiveness inherent in some of the other terms.

AMAN's working English definition of 'indigenous peoples' (*masyarakat adat*) is:

> … communities who live on land that has been passed down from generation to generation. They have a territory and natural wealth. Their social and cultural life is governed by customary law and customary institutions that have continuously sustained them as a community.

The Indonesian government's definition of a customary law community (*masyarakat hukum adat*) as expressed in recent legislation is similar:

> A Customary Law Community is a group of people who for generations have lived in a certain geographical area in the Republic of Indonesia because of ties to ancestral natural resources and have traditional governance institutions and an indigenous legal structure in their traditional territory (Law 39/2014 on Plantation Development, article 1(6)).

Even though Indonesian governments have used the term in the past, the current Indonesian government is actively refusing to use the English term 'indigenous peoples' in international forums. In the lead-up to the United Nations Framework Convention on Climate Change, held in Paris in late 2015, AMAN took the ministries responsible for drafting Indonesia's Intended Nationally Determined Contributions (INDCs) to task over this issue. This document details Indonesia's strategy to reduce its greenhouse gas emissions. While Indonesia's submission highlights and supports the role of indigenous and other local communities in sustainable resource management—indeed, to a greater extent than any other national submission—the document uses the term *'adat* communities', rather than 'indigenous peoples'. AMAN's legal and policy team drafted a detailed position paper highlighting the numerous times the Indonesian government had used the term 'indigenous peoples' in previous international statements and agreements, but the government refused to change its position (AMAN 2015).

National legal framework

Indonesia may well lead the world in specific legal references that recognise the rights of its indigenous peoples, starting with the constitution itself. Yet, it is also one of the world's poorest performers in terms of actual recognition. There are three main reasons for this. First, governments at all levels fear that the recognition of indigenous land rights may jeopardise the government revenue streams generated by resource extraction and land conversion, primarily by pulp and paper plantations, oil palm plantations and mining companies. Second, oversight of the executive by the legislative branch of government is weak. And third, an ineffective judicial system offers little recourse to aggrieved communities that have been forced from their lands by forestry and plantation companies.[4]

Table 4.1 presents statutory examples of the strong legal basis for recognition and protection of the rights of indigenous peoples in Indonesia. Law 39/2014 on Plantation Development, for example, includes several clauses prohibiting the licensing or operation of plantations within indigenous territories. Emblematic of the contradictions in and lack of enforcement of the law, however, plantations continue to expand into indigenous territories, where they are a leading driver of conflict, natural resource destruction, land-based greenhouse gas emissions and alienation of indigenous peoples from their ancestral domains. In short, while the legal basis for recognition of indigenous rights is strong, Indonesian law largely fails to guarantee and protect those rights.

Without effective oversight of the executive by the legislative branch of government, this situation is unlikely to change. In 2001, the highest policy-setting body in Indonesia, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR), passed a decree that set out a framework for land law reform and natural resource management (MPR Decree IX/MPR/2001). One of its central principles is the need to recognise, respect and protect the rights of indigenous communities. The decree obliges the parliament (Dewan Perwakilan Rakyat, DPR) and the president to pass regulations to implement agrarian reform, recognise indigenous rights and promote equity of natural resource management, and to annul, change or revise any laws that are not consistent with the stipulations of the decree. In the decade and a half since it was enacted, however, successive parliaments and presidents have not taken any meaningful action to implement the decree. The executive has never

4 For more detail, see Fay and Sirait (1999), McCarthy (2000), Fay and Michon (2005), Contreras-Hermosilla and Fay (2009), Safitri (2010), Colchester (2011) and Chao et al. (2013).

been held to account for this, although, as will be discussed later, the Widodo government is showing movement on agrarian reform and recognition of indigenous rights.

SOCIAL MOBILISATION AND GOVERNMENT RESPONSES

The birth of the indigenous peoples' movement in Indonesia can be traced to a 1993 gathering of indigenous leaders and supporters in Tanah Toraja, South Sulawesi. The main outcome of this meeting was the formation of the Indigenous Peoples Rights Advocacy Network (Jaringan Pembelaan Hak-Hak Masyarakat Adat, JAPHAMA). It was also at this time that indigenous leaders agreed to use the Indonesian term *masyarakat adat* to refer to Indonesia's indigenous peoples. JAPHAMA initially focused on exposing broad-based human rights violations against indigenous peoples and linking the emerging movement to related international efforts.

With the collapse of the Suharto government in 1998 came a period of political reform (*reformasi*). Democracy began to take hold, restrictions on the media lessened and tolerance for civil dissent increased. Following Suharto's resignation, 82 Indonesian non-government and student organisations formed the Coalition for the Democratisation of Natural Resources (Koalisi untuk Demokratisasi Pengelolaan Sumberdaya Alam, KUDETA) to press for a more equitable natural resources regime. KUDETA asked the transitional government to provide an assurance that the management of natural resources and the benefits derived from those resources would be returned to local communities. The student movement that had helped bring down Suharto set the early tone for the coalition's protests: its supporters held several demonstrations outside the national parliament and the first demonstration ever at the premises of the Ministry of Forestry.

KUDETA held a second protest in front of the offices of the Ministry of Forestry in December 1998. The protesters hung a large banner from the fourteenth floor of the building, obscuring the ministry's own sign. The banner called on the ministry to 'Stop Converting Forest to Oil Palm Plantations'. This action was instigated by a research report stating that several corporations had been given licences to convert large areas of forest to oil palm plantations.

In March 1999, JAPHAMA organised Indonesia's first national congress of indigenous peoples. More than 200 representatives from 121 ethnic groups attended, each wearing and sharing their culture through formal or spontaneous performances. Before the congress opened, they and their supporters demonstrated in downtown Jakarta, calling for the recognition and protection of indigenous communities. On the final day

Table 4.1 Examples of statutes that recognise and protect indigenous rights

Statute	Relevant articles
1945 Constitution	• Preamble states that the purpose of the constitution is 'to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate towards the establishment of a world order based on freedom, perpetual peace and social justice'. • Article 18B(2) (second amendment) states that 'The state recognises and respects indigenous peoples and their traditional rights providing these still exist and are in accordance with the development of the people and the principles of the Unitary State of the Republic of Indonesia, which shall be regulated by law'. • Article 28I(3) (second amendment) states that 'The cultural identities and rights of traditional communities shall be respected in accordance with the development of the times and civilisation'
Law 5/1960 on Basic Agrarian Principles	• Recognises *adat* law as the law that is most relevant to most Indonesians, and the basis of Indonesian land law, thus reversing the dualism of colonial/western versus *adat* law, which is specifically cited as undermining legal certainty. • States that resource rights should emphasise the prosperity of communities. • Recognises land rights over customary territories (*hak ulayat*). • Ties land and resource rights together.
Law 39/1999 on Human Rights	• Articles 4 and 6 confirm the existence of indigenous peoples' rights as human rights that must be considered and protected by law, the public and the government.
Law 27/2007 on Management of Coastal Areas and Small Islands	• Affirms the existence and unconditional recognition and protection of indigenous peoples, traditional wisdom and traditional communities.
Law 32/2009 on Environmental Protection and Management	• Article 65 protects indigenous communities and recognises their rights as basic human rights, including the rights to a healthy and good environment, local and traditional knowledge, decision-making based on free, prior and informed consent (FPIC), environmental education, information, justice, participation in decision-making, enforcement in the courts and compensation.

Table 4.1 (continued)

	Relevant articles
Law 32/2009 *(continued)*	• Recognises the importance of indigenous peoples in the process of crafting national and local policies for the recognition and protection of indigenous rights, and of local knowledge in crafting national and local policies related to the management and control of the environment.
Law 21/2001 on Special Autonomy for Papua Province	• Contains specific policies to protect the basic rights of indigenous peoples and communities in Papua.
Laws 22/1999 and 32/2004 on Regional Government	• Restores the rights of indigenous peoples to organise and regulate themselves in the form of an 'autonomous village' or to be referred to by another name in accordance with local cultural customs.
Law 39/2014 on Plantation Development	• Article 12(1) states that, 'in the case of land required for plantation businesses, companies must consult indigenous land right holders to obtain agreement on the delivery of land and compensation'. • Article 17(1) states that 'The relevant authorities are prohibited from issuing plantation permits over the land of indigenous communities'. • Article 55(b) states that '[Individuals are prohibited from] working, using, occupying and /or controlling public land or the land of indigenous peoples for the purpose of conducting a plantation business'. • Article 103 states that 'Any officer who issues a plantation permit over land with indigenous right holders […] shall be punished with imprisonment of 5 years or a fine of Rp 5 billion'.
Law 6/2014 on Villages	• Gives local communities the opportunity to propose becoming an indigenous village (*desa adat*), with substantial opportunities to self-govern based on traditional laws and customs. • Article 76 makes specific reference to communal land (*tanah ulayat*) as a village asset if a village has been legally recognised as an *adat* village by district or provincial legislation.
Draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples	• Synchronises and harmonises diverse sectoral laws at the initiative of the parliament (DPR); the draft law has been placed on the national legislative program for 2015–19.

Source: Author.

of the congress, the participants agreed to form the Indigenous Peoples Alliance of the Archipelago (AMAN), with a 47-person elected assembly, an executive committee and a five-point, three-year work program. Together with a formal structure of national representation, one of the main outcomes of the congress was the now famous slogan, 'If the state will not recognise us, we will not recognise the state!'

The congress also led to concrete political action. On 25 March 1999, the minister of agrarian affairs told those gathered at the congress that he was committed to addressing the grievances of indigenous peoples. Over the next two months, the National Land Agency (Badan Pertanahan Nasional, BPN) within his ministry, with some assistance from *adat* land specialists, developed Minister of Agrarian Affairs Regulation 5/1999 on Guidelines for the Settlement of Problems Relating to the Communal Rights of Customary Law Communities. For the first time, this regulation set in motion a process for determining the recognition of *adat* communities' communal rights (*hak ulayat*). This included outlining approaches to the mapping of *adat* territories by local governments, with the assistance of social scientists and non-government organisations. BPN was to accept applications for the registration of *adat* lands and to treat title over such lands as a communal and non-transferable right. The burning question at the time was what would happen in the areas where *adat* lands overlapped with land being used for other purposes. The state had already given out 65 million hectares to the timber industry and 15 million hectares to plantation companies, with another 48 million hectares set aside as protected forests, including national parks. Added to this list were 482 mining concessions and many transmigration areas (Fay and Sirait 1999).

In the 17 years since its formation in 1999, AMAN has developed into a national political force. At present it has 21 regional chapters, 108 district chapters and 2,302 member communities. While AMAN has embraced an active role in national politics, including fielding 181 parliamentary candidates in 2014, unlike many other civil society movements it is neither rooted in nor interested in affiliating with specific political parties. Instead, it has aligned itself on a case-by-case basis with parties, candidates and politicians who have demonstrated a commitment to AMAN's core agenda of realising the recognition and protection of the rights of indigenous peoples. This has increased courting of AMAN and its constituents at the national through local levels, as was evident during the 2014 elections when then presidential candidate Joko Widodo sought AMAN's endorsement and active support.

In January 2014, AMAN estimated that there was a 'high probability' that about 42 million hectares of land claimed as customary forest (*hutan adat*) by indigenous communities would be recognised as *adat* territory,

based on maps prepared by the organisation and its partners.[5] Over the course of the last decade, AMAN has assisted over 250 *adat* communities in 20 provinces to map their territories, with the support of partner organisations such as the Network for Participatory Mapping (Jaringan Kerja Pemetaan Partisipatif, JKPP) and the Ancestral Domain Registration Agency (Badan Registrasi Wilayah Adat, BRWA). This strategy complements the obligations of provincial and district governments—legislated, but rarely complied with—to complete accurate spatial plans of their regions based on social and biophysical realities on the ground. Participatory mapping is an entry point for AMAN to assist district and provincial governments to fulfil their obligation to undertake detailed spatial planning, by providing them with robust and culturally accurate datasets of the indigenous territories within their jurisdictions.

In 2012, AMAN submitted maps covering 4.8 million hectares of indigenous lands to the government for processing through the nationwide One Map initiative, which aims to produce a single, integrated map that can be used across government departments and agencies. In mid-December 2015, the organisation and its partners submitted additional maps to the newly created Ministry of Environment and Forestry,[6] bringing the number of land claims by *adat* communities to 604 and the total area of those claims to 7.4 million hectares. AMAN's Ancestral Domain Registration Agency (BRWA) has submitted maps covering another 2 million hectares of community lands, and AMAN has set a goal of mapping an additional 30 million hectares by 2020.

The Ministry of Environment and Forestry says that 5.3 million hectares of the land identified in December 2015 is located inside the forest zone. It has asked AMAN to assist with preparatory work to verify the claims of indigenous peoples within those areas, as part of a larger effort to allocate 12.7 million hectares of state forest to social forestry projects by 2019. While concerned about the lack of uniformity in implementing the requirement to recognise the rights and territories of indigenous peoples, AMAN has seized this opportunity to develop and test procedures for recognition in specific sites, with the backing of supportive district officials. Concrete actions such as this will continue to be critical in propelling government departments to comply with regulations that so far have largely been ignored, including the key step of developing a communal land-titling mechanism.

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5 The figure is based on an indicative map of indigenous territories prepared by AMAN and a number of other NGOs that identifies areas with a high, moderate, low or very low probability of being recognised as *adat* territory (Indigenous Voices in Asia 2014).

6 The Ministry Forestry was merged with the Ministry of Environment in 2014, soon after the Widodo government came to power.

RECENT LEGAL AND POLICY DEVELOPMENTS

Local government regulations

A critical article in Law 41/1999 on Forestry (the Forestry Law) deals specifically with indigenous peoples. Article 67 states that indigenous communities that have been recognised as such by provincial or district legislation have the right to own and manage their forest areas using traditional practices, provided these are in accordance with the law. Much attention is currently being paid to this article, with legal experts supporting the interpretation of indigenous communities that it is non-exclusive, meaning that recognition of an *adat* community by a local government is one but not the only pathway to such recognition. This will be discussed later in the context of the communal rights recognition process set in motion by Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015. The position of the bureaucracy in the Ministry of Environment and Forestry continues to be that indigenous forests can only exist within indigenous territories that are recognised by local government.

Some local governments, both provincial and district, have in fact made progress on the recognition of indigenous territories within their jurisdictions. In August 2015 one of Indonesia's leading legal and policy institutes, the Epistema Institute, issued a report identifying 124 actions that had been taken by local governments to protect the traditional territories, cultures and legal systems of indigenous communities (Malik, Arizona and Muhajir 2015). Nevertheless, only a few district governments in the provinces of Jambi, East Kalimantan and Aceh had granted a communal right (*hak ulayat*) over indigenous land, amounting to a total of just 15,577 hectares. The authors of the report recommended that the national government play a greater leadership role in the recognition process while remaining sufficiently flexible to accommodate the large variety of community tenure systems that already exist on the ground.

Constitutional Court Decision 35/PUU-X/2012

Constitutional Court Decision 35/PUU-X/2012, issued on 16 May 2013, has been lauded as a watershed in Indonesian history for its recognition of the land and resource rights of indigenous peoples, similar to the Mabo case in Australia or the Sparrow case in Canada. The decision came soon after Constitutional Court Decision 45/PUU-IX/2011, which itself has been credited for challenging the stronghold of the Ministry of Forestry over land and natural resource allocation through the ministry's designation of 70 per cent of Indonesia's land area as the national forest estate.

AMAN and two of its member communities, the Kuntu indigenous community from Riau and the Kasepuhan Cisitu indigenous community from Banten, filed the case. The petitioners challenged the constitutionality of Law 41/1999 on Forestry, arguing that it failed to adequately recognise, secure and protect indigenous land rights, as required by article 18B(2) and other articles in the constitution.

The crux of the problem can be explained as follows. According to the 1999 Forestry Law, both state forest (*hutan negara*) and private forest (*hutan hak*) fall under the overall classification of the permanent forest estate (*kawasan hutan*). State forest areas have no rights attached to the land, whereas private forests are subject to either individual or communal ownership rights. Until the court handed down its decision, indigenous forest areas (*hutan adat*) were state forest areas situated within indigenous territories (article 1(6)), and accordingly had no rights attached to the land. The legal contradiction between the constitutional obligation of the state to recognise, secure and protect indigenous rights, and the state's failure to provide any rights in indigenous forest areas, was obvious.

The Constitutional Court agreed with the petitioners that the categorisation of indigenous forest (*hutan adat*) as state forest (*hutan negara*) was unconstitutional. Overturning the definition given in article 1(6) of the Forestry Law, the judges ruled that an indigenous forest was a 'forest', rather than a 'state forest', located within an indigenous people's territory. As a result, lands where indigenous forests exist are assumed to have rights over them and must be classified as private forest (*hutan hak*), a classification that recognises individual or collective private ownership rights within the permanent forest estate (*kawasan hutan*).

Although the court ruled that indigenous forests were private forests, it rejected the plea of indigenous peoples for self-determination. It affirmed the state's authority to determine and recognise the existence of indigenous communities, while emphasising that such a designation, together with the designation of indigenous forests, depended on a process of formal state recognition. Most importantly, drawing on the same precepts outlined in Constitutional Court Decision 45/PUU-IX/2011, the court affirmed that unilateral rulings in the determination of forest status would be a violation of the constitution, and that the state must therefore establish a participatory process, involving indigenous communities themselves, for determining the legal status of indigenous forests.

Overall, the Constitutional Court's decision has empowered and invigorated Indonesia's indigenous rights movement, by providing a framework for the full recognition of the collective rights of indigenous peoples to manage ancestral domains situated inside the forest zone. It has led to a significant increase in local regulations on matters related

to indigenous land rights, and prompted a commitment from the Ministry of Environment and Forestry to designate 12.7 million hectares for community forestry, with a focus on indigenous communities. This commitment featured prominently in the Intended Nationally Determined Contributions (INDCs) Indonesia submitted to the Paris Climate Change Conference in December 2015.

Minister of Home Affairs Regulation 52/2014

A significant policy breakthrough came in July 2014, when the minister of home affairs issued Regulation 52/2014 on Guidelines for the Recognition and Protection of Customary Communities. The regulation sets out the procedure for district governments to recognise and protect indigenous peoples. It encourages district heads to establish investigative teams to assess land claims and empowers district heads to make decisions based on those teams' recommendations. Like Joint Ministerial Regulation 79/2014 issued later in the same year (see below), Regulation 52/2014 stipulates that those teams are to be made up only of local government officials, but unlike the joint ministerial regulation, it does recognise the need for input from local communities.

While Minister of Home Affairs Regulation 52/2014 represents an important step forward in the march towards recognition, the process is still onerous and allows unenthusiastic districts to avoid taking steps to recognise indigenous territories. It is also notable that the regulation does not mention the Forestry Law, therefore allowing indigenous territories to be recognised through this process both inside and outside the forest area. A decision by a district head is sufficient to determine that a given territory is private forest (*hutan hak*) inside the forest zone (*kawasan hutan*). As a result, and consistent with Constitutional Court Decision 35/PUU-X/2012, such areas cannot be declared part of the state forest area (*hutan negara*).[7]

The most immediate effect of Minister of Home Affairs Regulation 52/2014 was to make it possible for district heads to act on the Constitutional Court's decision and recognise indigenous territories without having to depend on the passage of local government legislation. That said, it leaves a lot of discretionary power to the district head. Another weakness is that a decision by a district head could be overturned by that person's successor.

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7 State forest area (*hutan negara*) is a subclassification within the forest zone (*kawasan hutan*); see article 1(4) of Law 41/1999 on Forestry (Rachman and Siscawati 2013).

Joint Ministerial Regulation 79/2014

In October 2014, in an effort to coordinate interministerial efforts, the ministers of home affairs, forestry and public works and the head of BPN agreed to develop procedures to address issues related to land status and natural resource conflict within Indonesia's permanent forest estate (Joint Ministerial Regulation 79/2014 of the Ministers of Home Affairs, Forestry and Public Works and the Head of the National Land Agency on Procedures for Settling Control of Land within the Forest Zone).

The problem of land status originally emerged when the Ministry of Forestry first mapped the forest estate in the 1980s. This process of 'forest land use by consensus' has been one of the most pointed areas of contention between the national government and local governments. The criteria the ministry developed to include areas in the forest estate were based on existing forest conditions, water and soil conservation values, and national and local socio-economic interests, as well as actual forest vegetation coverage. By the end of this process, 142 million hectares, or approximately 70 per cent of Indonesia's land area, had been classified as forest area. The forests were then divided broadly into those that could be used for or converted to production (such as logging and plantations) and those that were to be protected (such as watershed areas and areas designated as national parks).

The delineation of such a large area of land as forest caused two main problems for local communities: it led to the inclusion of large areas of land that were not forest but, rather, agricultural land or land that was being used for agroforestry; and it placed arbitrary restrictions on natural resource management that prioritised the protection of forest functions over the livelihood and nutritive needs of villagers living in or near the forests. As a result, the inhabitants of roughly 30,000 villages are at risk of being criminalised by laws such as Law 18/2014 on the Stopping and Eradication of Forest Destruction, which prohibits the clearing of forests.

Moreover, the status of much of the forest estate itself was called into question when research revealed that the Ministry of Forestry had legally gazetted only a small fraction of the forest area identified during the delineation process (Contreras-Hermosilla and Fay 2009). The 1999 Forestry Law states that the government must 'designate and/or gazette' the forest estate. Designation can be done relatively easily by consulting surveys and maps of vegetation cover, but full gazettement is a far longer process that involves consultations with local communities and local governments and requires the final approval of the minister of forestry.

In 2011, the Constitutional Court considered a petition from five district heads and a local businessman from Central Kalimantan challenging the authority of the central government to establish the permanent

forest estate by designation only. The court found in favour of the plaintiffs. It ruled against forest area designation without due process, opening the avenue for contestation of the existing forest estate boundaries. In their judgment, the justices noted that:

> The act of creating the National Forest Estate without a process that engages stakeholders, and in a manner not in accordance with the law, is that of an authoritarian government. Boundaries of the National Forest Estate that dominate the lives of so many people should not be created solely through designation without a formal process of gazettement […] which in the opinion of the court allows for the possibility that rights of people and traditional rights may exist in those areas and, as such, should be excluded from the National Forest Estate to protect those interests (Constitutional Court Decision 45/PUU-IX/2011).

This placed the Ministry of Forestry in an awkward position. Not only would it have to carry out a lengthier and more complicated procedure to establish legal control of the forest area, but it would also have to contend with claims from local communities, civil society organisations and local governments that the logging and plantation permits it had issued over millions of hectares of land were not legal since those areas had not yet been gazetted. The ministry's response has been to accelerate the gazetting process at an unprecedented rate. Currently, the Ministry of Environment and Forestry claims to have fully gazetted close to 70 per cent of the designated forest estate, although it has refused to make the maps of these areas available.[8]

The minister of environment and forestry's signature on Joint Ministerial Regulation 79/2014 is an indicator of the ministry's willingness to step back from its 30 years of hegemony over three-quarters of Indonesia's land base and cooperate with the other ministries that have a say over land management. Such a major interministerial collaboration would have been unthinkable during the Suharto period.

The regulation spells out the procedures BPN and the ministries of home affairs, forestry and public works will use in a joint effort to resolve land claims and provide secure forms of tenure within the forest zone. The most important and practical element of this collaboration has been

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8 It is worth noting that although a 'forestry' designation over community lands restricts the land-use options of local people and leaves them vulnerable to an expansion of pulp and paper plantations, it also protects them from an expansion of oil palm plantations (because the latter are legally classified as agricultural, not forestry, enterprises). Arguably oil palm plantations are a more serious threat to community land-use and forest management practices, as it is becoming increasingly difficult to regulate oil palm companies and assure accountability of their practices.

the establishment of the Team Listing the Control, Ownership, Use and Utilisation of Land (Tim Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah, IP4T). Operating at the district level, the IP4T teams are tasked with recording and verifying land claims, and making recommendations to the local BPN office regarding the validity of those claims. The main weakness in the procedure detailed in the interministerial regulation is that only government officials are able to serve on the IP4T teams.

Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015

The most recent and potentially most game-changing policy action by the government came in May 2015, when the minister of agrarian affairs and spatial planning and the head of BPN signed Regulation 9/2015 on Procedures for the Determination of Communal Rights on Customary Land and the Land of Communities in Special Regions. This regulation superseded Minister of Agrarian Affairs Regulation 5/1999 on the same topic (see page 100). The text of the new regulation explicitly responds to the need for agrarian and natural resource management reform, as required by MPR Decree IX/MPR/2001. It also stresses the importance of recognising the communal land-ownership rights of indigenous communities and highlights the need for government to protect those rights, in accordance with Constitutional Court Decision 35/PUU-X/2012.

The regulation is an important legal breakthrough in that it puts indigenous communities in a position to secure collective legal rights over their territories, without subjecting them to an overly political process that would require the establishment of a raft of provincial and district regulations. It also improves on Minister of Home Affairs Regulation 52/2014 and Joint Ministerial Regulation 79/2014 by broadening participation in the IP4T teams to formally include indigenous leaders and NGO representatives, as chosen by the district head.

An intriguing part of the new policy is found in the definition of communal rights (*hak komunal*). The regulation states that:

> Communal rights over land, hereinafter communal rights, are the communal rights over land belonging to a customary community or the communal rights over land granted to a community in a forest or estate crop area (Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015, Chapter 1, article 1.1).

It goes on to define the areas in which communal rights may exist as the forest zone and areas where plantation rights have been granted. The problem with this is that, while there are no legal barriers to the recognition and securing of rights inside the forest zone, this is not the case for

areas outside the forest zone. Recognition of communal rights over an area where a right to use land for plantations (*hak guna usaha*) has been awarded would raise procedural and other legal questions. This is an issue that will require clarification from the government.

Although the regulation facilitates the process of recognising indigenous peoples' rights over their territories—to an unprecedented extent—it also raises a number of delicate issues that have the potential to cause problems on the ground. The main concern of indigenous groups and some legal analysts is that the regulation only recognises territorial boundaries, and thus falls short of explicit recognition of *hak ulayat*, best defined as communal rights to exploit ancestral domain, including traditional natural-resource management systems. It also fails to mention the obvious challenge of what to do about forestry and land-use licences, particularly oil palm licences, that have been awarded illegally on indigenous lands. As a result, the regulation is inconsistent with the statement in Constitutional Court Decision 35/PUU-X/2012 that indigenous territorial rights are inherent rights that must be *recognised, secured and accorded protection*. These rights are not given by the state, because they existed before the state came into existence. To be consistent with both the Constitutional Court's decision and MPR Decree IX/MPR/2001, the government must develop an indigenous rights framework that incorporates the recognition, securing and active protection of indigenous territorial rights. Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 is strong on recognition but it is unclear on securing indigenous rights and absent on protection.

Second, the regulation reflects the position of the Ministry of Environment and Forestry that all indigenous territories that have been recognised by the state should be excised from the forest zone. This position contradicts the ruling by the Constitutional Court (Decision 35/PUU-X/2012) that indigenous forests can only be found within indigenous territories and that, consistent with the 1999 Forestry Law, all areas with private rights covering the land are classified as private forest within the forest zone.

The development of a national law on indigenous peoples

A national framework law on the rights of indigenous peoples is badly needed. AMAN legal experts have prepared a draft law, and numerous consultations have taken place both within the civil society community and with government. The call for a national law was first raised at AMAN's Lombok congress in 2003 and has been repeated at numerous congresses and other meetings since then. While consultations on the substance of the law have helped to clarify thinking and to suggest

strategies for advancing the recognition process, the bill itself has yet to gain momentum within the national legislative system. Although it is currently listed on the 2016 national legislative program and President Widodo has publicly declared his support for the legislation, there appears to be little hope that a comprehensive law will be passed in the near future given the near-stagnation in parliament in 2015, when only two of the 37 laws listed as priorities were passed.

Pressing issues

Several important considerations have arisen as the recognition of collective rights has come closer to becoming a reality. Three are particularly pressing. First, how can the state reconcile the recognition of collective rights over large areas of Indonesia with the land-use rights and land conversion permits that have already been awarded to timber, oil palm and mining companies? Clearly this will need to be a negotiated process, based on legal and procedural assessments of the validity of those concessions and permits and on the willingness of local people to talk to and potentially collaborate with these third-party entities.

A related issue concerns the presence of migrants within indigenous territories. While national procedures to deal with this issue have not yet been developed, it is generally deemed less contentious than the challenge of dealing with corporations. AMAN's position on migrants who are living in indigenous territories is that they are welcome to stay and to participate in the collective entity and that, like all community members, they must adhere to the rules as defined by the *adat* community.

A third concern, often raised by conservationists, is that indigenous communities may sell off their natural resources, and may not adhere to conservation restrictions in tropical forests as defined by the state. This concern reflects the common misunderstanding that Indonesian law is not binding for indigenous communities. In fact, this is not the case. For example, if an indigenous territory was recognised in an area where a national park had been established, the local community would be bound by the government's land-use restrictions over that landscape. AMAN's position in such cases is that negotiated co-management arrangements would be appropriate.

More generally, there continues to be a divide between the aspiration of indigenous peoples to gain a comprehensive set of rights as distinct peoples, and the procedures and mindset informing the Indonesian system of land administration. This is not surprising, but with greater communication and coordination among all groups, as well as more public consultations at the local level, it should be possible to narrow the gap and move the indigenous agenda forward.

CONCLUSIONS

The movement for the recognition of collective indigenous rights in Indonesia is gaining momentum. This is evident in the series of legal and policy actions taken by all levels of government, combined with the surge of activity in participatory mapping of indigenous territories. Moreover, civil society groups now occupy a strong political position in the national configuration as well as in many local areas.

Of the regulatory actions that followed Constitutional Court Decision 35/PUU-X/2012, Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 on communal rights may well offer the most promising immediate and long-term opportunities for local peoples. To be effective, this approach will require strong collaboration with civil society groups, particularly AMAN, as well as with related line ministries such as the Ministry of Home Affairs and the Ministry of Environment and Forestry. An institutional coordinating mechanism already exists in the form of Joint Ministerial Regulation 79/2014. Intelligent formation of the multisectoral teams that are tasked with reviewing *adat* community claims for recognition will be a pivotal step. Like any new and ambitious approach, this process will be based on learning-by-doing that must then lead to procedural improvements.

There is also a pressing need to include rights over ancestral domain (*hak ulayat*) in the recognition framework and to realise the three fundamental components for addressing the full spectrum of indigenous rights: recognition of indigenous communities, the securing of indigenous rights and the protection under law of those rights. To do this, a more effective partnership between the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Environment and Forestry is needed. Currently, this partnership is not strong. As a result, the tenure instrument for communal rights is limited to land and bears an uncomfortable resemblance to the expensive and overly bureaucratic land-titling procedures of BPN, making some communities and civil society groups wary. While the Ministry of Environment and Forestry appears committed to working with *adat* communities, it is dependent on the Ministry of Agrarian Affairs and Spatial Planning to recognise the collective rights of indigenous communities before it can develop co-management strategies with the *adat* communities whose private rights to indigenous territory inside the forest estate have been recognised.

Much remains to be done to develop a national recognition framework and to advance action at the local level. National legislation is needed to address questions of equity and collective management of globally important ecosystems and to minimise conflict between indigenous communities and corporate plantations. This requires a stepwise

approach, with the first step being the shaping and implementation of a legally robust process for recognising, securing and protecting indigenous peoples' collective rights. This is now under way, but broad civil society and international support, in addition to increased government commitment, will be needed to move this forward.

REFERENCES

AMAN (Aliansi Masyarakat Adat Nusantara) (2015) 'Half-hearted recognition of Indonesia's best forest guardians', position paper on Indonesia's Intended Nationally Determined Contribution (INDC), Indigenous Peoples Alliance of the Archipelago (AMAN), 14 September.

Chao, S., A.K.L. Raja, F.A. Chalifah and T. Kusumohartono (2013) 'PT Mustika Sembuluh and the Dayak Temuan of Central Kalimantan', in S. Chao and M. Colchester (eds) *Conflict or Consent? The Oil Palm Sector at a Crossroads*, Forest Peoples Programme, Sawit Watch and TUK Indonesia, Moreton-in-Marsh, Bogor and Jakarta: 69–100.

Colchester, M. (2011) 'Palm oil and indigenous peoples of Southeast Asia: land acquisition, human rights violations and indigenous peoples on the palm oil frontier', Forest Peoples Programme and International Land Coalition.

Contreras-Hermosilla, A. and C. Fay (2009) 'Strengthening forest management in Indonesia through land tenure reform: issues and framework for action', Forest Trends and World Agroforestry Centre, Bogor.

Fay, C. and G. Michon (2005) 'Redressing forestry hegemony: when a forestry regulatory framework is best replaced by an agrarian one', *Forest, Trees and Livelihoods*, 15(2): 193–209.

Fay, C. and M. Sirait (1999) 'Reforming the reformists in post-Suharto Indonesia', in C.P. Colfer and I.A.P. Resosudarmo (eds) *Which Way Forward? People, Forests and Policymaking in Indonesia*, Resources for the Future, Washington, DC: 126–43.

Indigenous Voices in Asia (2014) 'Indonesia: indicative map of indigenous territories launched', Indigenous Voices in Asia, Bogor, 30 January. Available at http://iva.aippnet.org/indonesia-indicative-map-of-indigenous-territories-launched/

Komnas HAM (Komisi Nasional Hak Asasi Manusia) (2015) 'National inquiry on human rights violations inside Indonesia's forest estate', preliminary report, Human Rights Commission (Komnas HAM), Jakarta.

Malik, Y. Arizona and M. Muhajir (2015) 'Analisis trend produk hukum daerah mengenai masyarakat adat' [Analysis of local government trends concerning *adat* communities], Policy Brief Volume 01/2015, Epistema Institute, Jakarta. Available at http://epistema.or.id/publikasi/analisis-kebijakan/analisis-trend-produk-hukum-daerah-mengenai-masyarakat-adat/

McCarthy, J.F. (2000) 'The changing regime: forest property and *reformasi* in Indonesia', *Development and Change*, 31(1): 91–129.

Parlina, I. and F.S. Sundaryani (2015) 'Jokowi rejects apology, promotes stability', *Jakarta Post*, 2 October.

Rachman, N.F.and M. Siscawati (2013) 'A recent development of forest tenure reform in Indonesia', Samdhana Institute and Rights and Resources Initiative, January.

Safitri, M. (2010) 'Forest tenure in Indonesia: the socio-legal challenges of securing community rights', PhD dissertation, Leiden University, Leiden. Available at https://openaccess.leidenuniv.nl

World Bank (2015) 'World development indicators', World Bank, Washington, DC. Available at data.worldbank.org/country/Indonesia

5 REDD, land management and the politics of forest and land tenure reform with special reference to the case of Central Kalimantan province

Suraya A. Afiff

Climate change has become an increasingly important part of the policy discourse in Indonesia since the Indonesian government hosted the United Nations Climate Change Conference in Denpasar, Bali, in December 2007. This became clear, in particular, when the president at the time, Susilo Bambang Yudhoyono (2004–14), pledged at the G20 Leaders Summit in Pittsburgh in 2009 that Indonesia would, by 2020, reduce its greenhouse gas emissions by 26 per cent from the predicted 'business-as-usual' rate, or by 41 per cent if the country received international assistance to achieve this. International donors responded by funding demonstration projects in Indonesia under the United Nations' Reducing Emissions from Deforestation and Forest Degradation (REDD) mechanism. The government of Norway pledged up to $1 billion to assist Indonesia to reduce emissions from the forest sector. It also provided a separate grant to allow Indonesia to undertake preparatory activities towards developing and implementing a national REDD strategy. The Indonesian and Norwegian governments signed a letter of intent (LOI) setting out the scope of these preparatory activities in 2010.

This has led to a new period of environmental policy development and innovation in Indonesia. It follows two earlier waves of policy change (Table 5.1) and marks a major shift in policy thinking about forest and land tenure reform. A diverse range of non-state actors in Indonesia have used the global policy discourse on carbon sequestration, REDD and carbon trading to justify a new set of land-use and land tenure arrange-

Table 5.1 Three waves of environmental reform

Period	Legal reform	Effect
1st wave: colonial period	Regulations to establish nature reserves and protected areas, 1916	• Approximately 67 reserves were established across the Netherland East Indies
2nd wave: New Order period	Law 5/1967 on Forestry	• About two-thirds of Indonesia's total land area was designated as national state forest
	Law 5/1990 on Conservation of Living Resources and Their Ecosystems	• 22 million hectares (17.8 per cent of the total state forest area) were designated as nature reserves, wildlife sanctuaries and conservation areas
3rd wave: *reformasi* period	Presidential Instruction 10/2011 on Suspension of Granting of New Licences and Improvement of Governance of Natural Primary Forest and Peatland	• Placed moratorium on issuance of new licences in primary forest and peatland • In December 2015, roughly 65 million hectares of state forest were affected by the moratorium
	Law 4/2011 on Geospatial Information	• Authorised the construction of a single map to be used across all levels of government • Provided a legal basis for the Geospatial Information Agency (BIG) to coordinate the collection of all geospatial information
	Presidential Instruction 2/2007 on the Acceleration of Rehabilitation and Revitalisation of Peatland Areas in Central Kalimantan	• Authorised restoration of peatland forest ecosystems in Central Kalimantan • By 2015, a total area of 558,185 hectares (24 per cent of the government target of 1.79 million hectares) had been restored

Source: Author.

ments, involving them in a renewed tussle with the Indonesian government over the direction and intent of forest and land tenure policy.

Critics of the most recent period of policy development have labelled it 'green grabbing'. Fairhead, Leach and Scoones (2012: 238) argue that appropriation 'implies the transfer of ownership, use rights and control

over resources that were once publicly or privately owned […] from the poor (or everyone including the poor) into the hands of the powerful'. Like many other researchers, they draw attention to the global land grabbing by foreign investors that has taken place across Africa, Asia and Latin America, not only for green purposes but also for cheap food crops, infrastructure and other purposes (GRAIN 2008; Wolford 2010; Zoomers 2010; Borras et al. 2011). Across the globe, green grabbing has led to the appropriation of large tracts of land for environmental ends, such as national parks, biofuel crops, ecotourism, carbon markets and REDD projects. Like the appropriation of land by corporations, this may cause relatively poor communities to lose access to their land and to the resources they need to sustain their livelihoods. Even in cases where the poor are not evicted from their land, large land deals for green projects generally impose new restrictions on local residents that alter their relationship with the land and restrict their access to resources. This can often lead to poor communities being criminalised for continuing livelihood practices that conflict with the new, imposed green agenda (Fairhead, Leach and Scoones 2012).

Although green grabbing may have occurred in Indonesia, in my view an excessive focus on the appropriation of lands for conservation in the global climate change discourse leads us to overlook other aspects, such as how local actors respond to or make use of the political opportunities shaped by the international environmental discourse. Rather than analysing the global policy discourse on carbon sequestration, REDD and carbon trading, or discussing the successes or failures of implementation of the REDD program in developing countries, this chapter first considers what the recent global policy discourse has meant for local actors in Indonesia. Second, it investigates how this discourse has created the political conditions for civil society activists to be able to influence national policies governing access to and use of the nation's forests. Third, it asks how this has affected land-use claims and land tenure arrangements.

In 2011, a loose coalition of 17 civil society organisations that had been campaigning for many years for land rights for the rural poor published a report setting out the case for forest tenure reform to address issues of insecurity and injustice (Epistema Institute et al. 2011). In addition to the Epistema Institute, these organisations included the Association for Community and Ecology Based Law Reform (Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis, HuMa), the Consortium for Agrarian Reform (Konsorsium Pembaruan Agraria, KPA), the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN) and the Partnership for Governance Reform (Kemitraan). On the whole, they were more concerned with enhancing

the rights of indigenous and local communities to control land in state forest areas than with the implementation of the REDD program per se. However, because REDD projects provided a space to advance the agenda for forest tenure reform, some chose to work under the REDD banner.

In the next section of this chapter, I discuss two key policies that grew out of the bilateral agreement between Indonesia and Norway in 2010: the moratorium on the issuance of new licences in primary forest and peatland, and the One Map initiative. I consider how these policies have affected land-use and land tenure claims in Indonesia, including the response of civil society groups. Next, I discuss how the global policy discourse on climate change, especially the REDD program, has affected Indonesia's institutional arrangements for managing land in state forest areas. I identify two important milestones in the campaign for land tenure reform: official recognition of the existence of villages within state forest areas, and the Constitutional Court ruling taking customary (*adat*) forest out of state forest areas. Both have affected the relations between civil society organisations and the state authority responsible for state forests, the Ministry of Forestry (now the Ministry of Environment and Forestry). I then discuss how national policies have played out in Central Kalimantan province, which President Yudhoyono designated as the pilot province for the implementation of the national REDD program.

The civil society organisations that have participated in Indonesia's REDD program have had differing motivations and objectives. Some viewed it as a means of achieving specific targets. For them, REDD projects served as an alternative source of funding to continue their work in the conservation sector. For others, such as the groups working for forest tenure reform that are the main focus of this chapter, the REDD initiative provided an opportunity to rework their advocacy agendas. Under the umbrella of REDD projects, they were able to argue strategically for the need for the government to address forest tenure issues in ways that would strengthen the rights of indigenous and local communities to access and use their local forests.

The Yudhoyono government created the institutional environment in which this was possible, by establishing the REDD+ Taskforce (Satgas REDD+) in 2010, and the REDD+ Agency that succeeded it in 2013.[1] The taskforce was given the job of implementing the government's REDD policies. It relied on the support of the civil society sector, in part because

1 The plus sign in REDD+ refers to the incorporation of sustainable forest management, conservation of forests and enhancement of carbon sinks into the REDD scheme. In this chapter, I use 'REDD' as the general term for all schemes and 'REDD+' only when referring to the names of specific organisations.

it lacked support from officials in other line ministries, who viewed it as working against their interests (Wibowo and Giessen 2014). At the national level, the good working relationship with the REDD+ Taskforce provided momentum for the work of these activists, even though the national policy changes often had little effect on the ground due to a lack of effective enforcement (Austin et al. 2014).

The civil society sector had to change its strategy when Joko Widodo (Jokowi) was elected president in 2014. The new president abolished the REDD+ Agency and also the National Climate Change Council (Dewan Nasional Perubahan Iklim, DNPI). He combined the ministries of environment and forestry into a new ministry, the Ministry of Environment and Forestry, and gave it responsibility for REDD and climate change issues (Murdiyarso 2014). This change in the political landscape forced activists to redirect their advocacy efforts away from the REDD program and towards the new national development target to redistribute at least 12.7 million hectares of state forest to local and indigenous communities by 2019.

THE RESPONSE OF LOCAL ACTORS TO THE REDD PROGAM

During the second phase of environmental reform (Table 5.1), the Suharto government created a legal framework that allowed the Ministry of Forestry to unilaterally designate approximately two-thirds of the country's total land area as state forest (*hutan negara*), or what Peluso and Vandergeest (2001) have called 'political forest'. Under this framework, the ministry had the authority to issue forest exploitation licences and forest conversion permits, thus setting up the institutional problems that still plague forest and land management today (McCarthy 2000; Brockhaus et al. 2002).

After Indonesia and Norway signed the LOI on preparatory activities for a national REDD strategy in 2010, and Indonesia set about developing its REDD framework, a new agenda for reforming the management of Indonesia's state forest took shape. This led to a series of attempts to rework the approach to state forest and the system of land tenure that sustained it, setting off a tussle over the system to control licences in areas with varying degrees of forest cover and different types of ecosystems. The REDD initiative also changed the power balance between the Ministry of Forestry and the other government agencies that had some responsibility for forest governance (Wibowo and Giessen 2014).

Instead of allowing the forestry minister to coordinate the implementation of the LOI, Yudhoyono gave this task to his newly formed REDD+ Taskforce. Under the leadership of Kuntoro Mangkusubroto, one of the

president's most trusted advisors, the taskforce became a focal point for those pushing for forest governance reform. It recruited many people with strong links to civil society organisations, and eventually became an important ally of those advocating for forest tenure reform. The REDD+ Taskforce facilitated the involvement of civil society groups in REDD activities, contributed to their ability to incorporate their advocacy agendas into the national policy framework and in some respects improved the transparency of government information. Two policies in particular are associated with Yudhoyono's term in office and the REDD+ Taskforce: the moratorium on new licences in primary forest and peatland, and the One Map policy.

Moratorium on new licences in primary forest and peatland

President Yudhoyono's moratorium on new licences in primary forest and peatland represented an attempt to freeze the issuing of new permits allowing companies to operate within state forest. Given the high levels of greenhouse gases in peat, the plan focused on peatland areas, creating a new rationale for their protection and conservation.

The plan triggered a strong reaction from the various stakeholders. The Indonesian Palm Oil Association (Gabungan Pengusaha Kelapa Sawit Indonesia, GAPKI) protested strongly against the freeze. It argued that the policy would hurt private sector investment in oil palm plantations, which made a major contribution to the Indonesian economy (Simamora 2008; Butler 2011). Some government officials supported this position and actively lobbied the president to reshape the plan. Their primary goal was to ensure that the moratorium would not target logged forests, often referred to as secondary forest (Kompas 2011a, 2011b). However, environmental activists and their allies supported the licensing moratorium (Anggoro 2010; Murdiyarso et al. 2011; Edwards, Koh and Laurance 2012), and urged the president to include secondary forest. They pointed out that although large areas of Indonesia's vast secondary forests had been selectively logged in the past, they still had some relatively good forest cover.

Under pressure to find a consensus, the president decided to confine the moratorium to new concession licences in primary forest (defined as forest that had not been logged or was 'less exploited') and peatland forest; secondary forest would be exempted from the moratorium (Rondonuwu and Taylor 2011). The moratorium came into effect in 2011, under Presidential Instruction 10/2011 on Suspension of Granting of New Licences and Improvement of Governance of Natural Primary Forest and Peatland. It was extended for a further two years in 2013 (Presidential Instruction 6/2013) and then for another two-year period in 2015 (Presidential Instruction 8/2015).

Table 5.2 Area affected by the moratorium on new licences, 2011–15

Proposal/ revision	Date	Area (ha)	Change in area (ha)
Original proposal	20 June 2011	69,144,073	–
1st revision	22 November 2011	65,374,252	–3,769,821
2nd revision	16 May 2012	65,281,892	–92,360
3rd revision	19 November 2012	64,796,237	–485,655
4th revision	16 May 2013	64,677,030	–119,208
5th revision	13 November 2013	64,701,287	+24,257
6th revision	13 May 2014	64,125,478	–575,809
7th revision	13 November 2014	64,088,984	–36,494
8th revision	27 May 2015	65,015,014	+926,030

Source: Ministry of Environment and Forestry (2014).

Before the moratorium could be implemented, state planners needed to designate the areas that would fall under the plan. The first moratorium affected primary forest and peatland areas extending over approximately 69.1 million hectares. The REDD+ Taskforce asked the Ministry of Forestry to publish a map to make this information accessible to the public. The government has revised the indicative map every six months to take account of land that was either added to or released from the area covered by the moratorium (Table 5.2).

The first revision (22 November 2011) reduced the area to 65.4 million hectares after 3.7 million hectares of peatland were released from the moratorium area. This significant change in area occurred after the map produced by the Ministry of Forestry was overlaid with the map held by the National Land Agency (Badan Pertanahan Nasional, BPN), as these two government institutions had not previously shared information. Further changes of area have occurred since then, based on information provided by local governments and the public, and verified by the REDD+ Taskforce. The latest revision, dated 27 May 2015, increased the total land area subject to the moratorium by over 900,000 hectares (Priyatmono 2015).

The many revisions to the area affected by the moratorium reveal the underlying problem of relying on a forest map, held by one ministry alone, that did not represent actual conditions on the ground or take account of the dynamics of changing land use. The forest map failed to incorporate information from other sectors and government agencies, or from the public. For example, it did not show the location of villages

within or around the forests, or land claimed by indigenous and local communities. Nor did the official forest map take account of the permits issued by local governments allowing companies to operate within state forest areas. Often, roads and government buildings were present in areas still recorded, on the map held by the ministry in charge, as being state forest. Given the lack of spatial coordination and the problems of partial information caused by the lack of a common map, it is not surprising that it has been necessary to revise the indicative moratorium map every six months.

The short-term goal of the freeze on the issuance of new forest licences was to give the government the space to review the licensing process and improve forest governance. The ultimate purpose was to help the government meet its objective to reduce emissions from the forest sector by at least 26 per cent. Thus, the advocates of the policy expected that it would help to prevent the conversion of Indonesia's remaining forests and peatlands to oil palm plantations. However, researchers at the Center for International Forestry Research (CIFOR) found that approximately 66 per cent of the 66.4 million hectares of land identified in the indicative moratorium map in August 2011 was already classified as conservation area (*kawasan konservasi*) or as protection forest (*hutan lindung*) (Murdiyarso et al. 2011). That is, by definition, even without the moratorium, the government had already designated this area for conservation. The 'new' area set aside to reduce greenhouse gas emissions therefore amounted to only 22.5 million hectares, or 34 per cent of the total area. Much of this land was located in Papua and Kalimantan, and most of it was peatland forest.

Supporters of the moratorium have expressed the view that lobbying by corporations stopped the government from implementing a meaningful policy to prevent the destruction of Indonesia's remaining forests and peatlands and in that way reduce greenhouse gas emissions (Maulia 2015). Indeed, the policy does not seem to have had a significant impact on the number of permits issued to corporations. According to one report, by early 2014 the government had rejected permits covering only 1.3 million hectares of forest land in Sumatra, Kalimantan, Sulawesi and Papua (Butler 2014). This raises the question of whether a licensing moratorium is the most effective strategy to achieve the national target for reducing emissions. In a recent study, Busch et al. (2015) argue that although the moratorium has had some impact in reducing emissions compared to there being no moratorium at all, it has not been effective in reducing emissions from the forest and land-use sectors by a significant amount. To meet the national target of a 26 per cent reduction in emissions, not only should the area covered by the moratorium be expanded to secondary forest, but other strategies to reduce emissions from exist-

ing concessions, and from deforestation outside the moratorium areas, should also be introduced:

> To have achieved a 26% reduction in emissions, the moratorium would have had to address the 21.1% of emissions from deforestation on existing palm oil and timber concessions and the 58.7% of emissions from deforestation outside of sanctioned concessions and protected areas (Busch et al. 2015: 1,331).

To everyone's surprise, shortly after he came to power President Widodo not only abolished the REDD+ Agency that had been established by Yudhoyono, but he also terminated the National Climate Change Council (Susanto 2015). Marking a change in direction from the policies pursued by the previous administration, he gave responsibility for REDD and climate change issues to the newly created Ministry of Environment and Forestry. However, following a number of public statements from prominent civil society organisations, including the Indonesian Forum for the Environment (Wahana Lingkungan Hidup Indonesia, WALHI), the Partnership for Governance Reform (Kemitraan), Greenpeace and the World Resources Institute, Jokowi did renew the moratorium on the issuance of permits in primary forest and peatland for another two-year period (Butler 2015; Jacobson 2015). Although relieved that Jokowi had agreed to renew the moratorium, activists and scholars expressed their disappointment that no significant improvements had been made to the policy (Saturi 2015). Overall, the changes introduced by the current administration may be interpreted as a sign of weakening support for the REDD program under the Jokowi government.

One Map policy

As noted above, the lack of a common map used and shared by all government institutions has been a problem plaguing forest governance in Indonesia for many years. Each government department has had its own map, which it uses as the basis for planning and issuing concession permits. Far from sharing information, officials from different sectors and levels of government keep it to themselves and hesitate to provide it to officials outside their institutions, let alone the public. As we have seen, this situation caused huge coordination problems for the REDD+ Taskforce, entangling it in a complex web of overlapping permits and land tenure arrangements in the targeted moratorium area. This prompted the taskforce to propose the development of a single map that could be used across government, as well as being made available to the public.

The One Map strategy required a number of key government agencies to agree on a common map that could provide the basis for policy decision-making. The new policy was expected to represent a step towards

improved forest governance in Indonesia through the rationalisation of the process for issuing forest development permits.

The first step was to develop a map showing primary forest and peatland areas, for the use of the key government institutions involved in implementing the moratorium on new licences (UKP4 and Satgas REDD+ 2013). This involved horizontal coordination between, for instance, the Ministry of Forestry and the Ministry of Environment (before they were combined), which each had its own definition and map of primary forest and peatland areas. It also required vertical coordination between the central, provincial and district levels of government. The districts had the power to issue oil palm and mining permits, and used their own maps to determine the allocation of those permits to corporations. However, they did not always share this information with the provincial or national governments, making monitoring of the moratorium difficult for the higher levels of government (UKP4 and Satgas REDD+ 2013). In 2014, the national government passed a law returning the power to issue permits to the central government (Law 23/2014 on Regional Government). However, the law provides for a two-year grace period, so until September 2016 the provincial and national governments may continue to encounter difficulties in monitoring and enforcing the moratorium on the ground.

The key institution charged with implementing the One Map policy was the national Geospatial Information Agency (Badan Informasi Geospasial, BIG), formed in 2011 to replace the previous agency, the National Coordinating Agency for Survey and Mapping (Badan Koordinasi Survei dan Pemetaan Nasional, Bakosurtanal). BIG was tasked with producing a baseline map, on various scales, to support the needs of government agencies and the general public. Law 4/2011 on Geospatial Information provided the legal basis for BIG to coordinate the collection of all geospatial information in the country, and the REDD+ Taskforce provided the political back-up for the new agency to implement its coordinating role. Without this, BIG would have had great difficulty making powerful sectors such as the Ministry of Forestry and the Ministry of Mining comply with the One Map policy.

This approach resulted in significant improvements in the transparency of information in the forestry sector. As the biggest landowner in Indonesia, the Ministry of Forestry was notorious for limiting public access to forest information. Under pressure from the REDD+ Taskforce, however, the ministry made the map of areas subject to the moratorium publicly available, together with long-secret information on plantation and forestry permits (UKP4 and Satgas REDD+ 2013).

Civil society organisations and the general public also had a stake in the reform, particularly to develop the transparency crucial for moni-

toring compliance with the moratorium. They were also keen to see the lands of *adat* communities recognised as part of the mapping process. In particular, AMAN hoped that the 4.8 million hectares of *adat* land that it had mapped with the participation of *adat* communities could be incorporated into the government's One Map process (Saturi 2014).

Kuntoro Mangkusubroto, the head of the REDD+ Taskforce and of the (also now abolished) President's Delivery Unit for Development Monitoring and Oversight (Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan, UKP4), was a key player in facilitating the incorporation of *adat* maps into the official One Map process, under the supervision of BIG. This historic event occurred on 14 November 2012 at the UKP4 office in Jakarta, when AMAN's Ancestral Domain Registration Agency (Badan Registrasi Wilayah Adat, BRWA) and the Network for Participatory Mapping (Jaringan Kerja Pemetaan Partisipatif, JKPP) formally handed over their maps of *adat* land (Saturi 2012).

Like the licensing moratorium, the One Map policy survived under the Jokowi government. On 30 November 2015, on the opening day of the United Nations Climate Change Conference in Paris, Jokowi reaffirmed his commitment to the One Map policy as a strategy to improve forest governance in Indonesia, while also unveiling a new strategy to restore peatland areas (Mahbub 2015). One important signal of Jokowi's commitment to the One Map policy was the transferral of BIG from the Ministry of Research and Technology to its current position under the National Development Planning Agency (Badan Perencanaan Pembangunan Nasional, Bappenas). This has strengthened BIG's position as a key player in the government's decision-making processes. However, it still faces the problem of persuading other government agencies to share geospatial information. It appears that BIG may still need political support from high-ranking officials, or perhaps even the president himself, to ensure compliance with the provisions of Law 4/2011 on Geospatial Information (personal communication, BIG official, 10 December 2015).

REDD AND THE CIVIL SOCIETY AGENDA FOR FOREST TENURE REFORM

Advocacy groups in Indonesia (and elsewhere) have always engaged strategically with the global environmental discourse, taking up policy narratives and modifying their meaning to fit with their advocacy agendas (Tsing 2004; Peluso, Afiff and Rachman 2008). Tracing the context of the work of a number of advocates for forest reform provides an understanding of how Indonesia's civil society groups have been able to rework the global REDD discourse.

In the 1980s, the global environmental discourse inspired urban intellectuals in Indonesia to form the environmental umbrella organisation known as WALHI (Kalland and Persoon 1998; Peluso, Afiff and Rachman 2008).[2] WALHI initially focused on public education and training, in cooperation with the Ministry of Environment. However, concerned about the impact of state forest policy on the land rights and livelihoods of local communities, in the 1990s some of its activists began to advocate on behalf of local and indigenous communities. At the time, Suharto's New Order government was aggressively expanding state power over forest areas outside Java as part of a strategy to increase timber exploitation and promote economic growth. This was resulting in major destruction of the assets and livelihoods of people dependent on natural resources. During this period, those advocating directly for the rights of indigenous and local communities over forest land faced harsh political consequences or even state repression. The emergence of an international discourse on the role of indigenous peoples in conservation provided some political space for Indonesia's environmental justice advocates (Afiff and Lowe 2007). They linked their defence of customary rights and practices to internationally recognised environmental governance concepts and began to codify *adat* law in terms of principles that could be recognised and validated under Indonesian laws and regulations (Zerner 1994: 1,081–2).

During the reform period that began in 1998, both new and existing organisations continued to advocate for forest tenure reform, but using different strategies. One such organisation was AMAN, founded in 1999 (Li 2001; Fay and Sirait 2002; see also Chapter 4 of this volume by Fay and Denduangrudee). While not being able to bring about radical changes in national forest policy, these organisations had some successes. They succeeded in ensuring that the forestry law enacted during the reform period, Law 41/1999 on Forestry, acknowledged the existence of customary law communities (*masyarakat hukum adat*) and gave them some rights to forest land (article 67), and that it contained an article on popular participation (article 68). However, like the law it replaced, Law 41/1999 stipulated that indigenous lands were part of state forest (*hutan negara*) (Down to Earth 1999); it did not ensure local people's access to forest land and it did not accommodate the demand of indigenous communities to gain legal recognition of their customary land rights. The 1999 Forestry Law stated that the Ministry of Forestry could devolve its right to control state forest land to indigenous communities. However, this left the ministry with discretionary power over the process through which

2 In addition to its national headquarters in Jakarta, WALHI currently has 28 regional offices based in the provincial capitals.

indigenous communities might be able to gain control of their lands. In other words, the Forestry Law provided only vague acknowledgment of the rights of indigenous and local communities to gain access to and establish control over state forest areas (Colfer and Resosudarmo 2002; Siscawati, Rachman and Saptariani 2014).

In the face of this setback, activists and concerned academics divided into two camps (Siscawati, Rachman and Saptariani 2014). The first, which I call the 'rights camp', wanted the government to acknowledge the right of indigenous communities (*masyarakat adat*) to claim land, and pushed for government land distributions to those communities. The second camp, which I call the 'forest access camp', deliberately avoided demanding radical forest-tenure reform. It wanted the Ministry of Forestry to provide greater community access to state forest areas, without requiring distributive land reform as demanded by the first camp.

In practice, the ministry has not been prepared to negotiate with the 'rights camp'. An international donor's project had to be temporarily closed down in 2004/05 when a representative from the Ministry of Forestry clashed with an advocate from the 'rights camp' during a multi-stakeholder meeting. The ministry has only been willing to discuss opportunities to give local people access to forest without distributive reform. In other words, it wishes to avoid acknowledging that indigenous communities may have valid claims to ownership of their customary lands.

The ministry has, however, been willing to collaborate with the 'forest access camp'. Giving local communities access to forests is in line with the global discourse on community forestry that emerged in the late 1970s (Colchester et al. 2003) and it accords with the objectives for social forestry policy in Indonesia, which emerged in the 1970s and found full expression in the 1980s (Peluso 1995; Santosa and Silalahi 2011; Siscawati, Rachman and Saptariani 2014). In Indonesia, social forestry (*perhutanan sosial*) is a broad term that lumps different strategies to give usufruct rights to local and indigenous communities, either to allow them to obtain some benefit from the resources in the state forest area or to involve them to some degree in forest management. Social forestry projects would typically include giving villagers temporary rights to establish small agricultural plots between the trees in a forest plantation, providing permits to allow local people to collect non-forest products, providing land for the establishment of smallholder forest plantations, or issuing permits over areas within state forest areas where local communities can manage the land. The most important aspect of this policy is that social forestry schemes do not involve the transfer or devolution of land ownership rights to the local or indigenous communities; the land used for a social forestry program always remains under the ownership of the state.

Advocates' demands for more social forestry schemes finally bore fruit in 2007 when the government passed Government Regulation 6/2007 on Forest Governance, Planning and Utilisation (Santosa and Silalahi 2011). Under this regulation, a village government can be granted the right to manage an area of village forest (*hutan desa*) that the government has classified as production forest or protection forest (article 85). This was followed in 2008 by an implementing regulation setting out the mechanism for obtaining a permit to establish the right to village forest (Minister of Forestry Regulation P.49/Menhut-II/2008 on Village Forest). Three types of social forestry schemes have been implemented under Government Regulation 6/2007, involving community forest (*hutan kemasyarakatan*), community plantation forest (*hutan tanaman rakyat*) and village forest (*hutan desa*).

The 'rights camp' opposed the village forest scheme because it fell short of its preferred scheme of full government recognition of customary forest (*hutan adat*) as privately owned forest (*hutan milik*). In its view, the land claimed by *adat* communities was not the property of the state but communal land legitimately owned by indigenous communities. *Adat* advocacy organisations such as AMAN argued that accepting the village forest scheme meant accepting the view that the land claimed by indigenous communities was part of the national government's forest estate.

The Ministry of Forestry has been reluctant to pass a regulation on customary forest because it would mean releasing state land to indigenous communities, which would diminish the ministry's power. Given the ministry's reluctance, some environmental justice activists have begun to promote the village forest scheme as a temporary strategy until a regulation on *adat* forest becomes possible (Siscawati, Rachman and Saptariani 2014). The 'rights camp', notably AMAN, does not agree with this strategy, although, in practice, some of its members have been willing to take the option of establishing a village forest as a necessary step towards securing state forest land inside a village's territory.

Even the 'forest access camp', however, has become frustrated with the incredibly slow pace of reform. For instance, a 2014 government report shows that from 2009 to 2014 a total area of only 1.4 million hectares, or less than 2 per cent of the total production forest zone, was allocated to community forestry schemes, whereas 40 million hectares (more than 98 per cent of the production forest zone) were allocated to corporations (Ministry of Forestry 2014).

When the REDD concept first began to circulate in international forums, some civil society organisations in Indonesia were opposed to it. WALHI, for example, argued that the REDD carbon-trading mechanism would allow developed countries to continue to produce high emissions,

while transferring the burden of emission reductions to developing countries. Moreover, the REDD mechanism failed to address other important issues related to the patterns of consumption in developed countries that were contributing to deforestation in countries such as Indonesia (Lang 2012). WALHI was among the organisations that launched an international campaign against the REDD program under the slogan 'Climate Justice Now!' The regional offices of WALHI, however, adopted a more complex strategy that differed from that of the national headquarters in Jakarta. While campaigning against the carbon market scheme, the regional offices decided to accept the funds offered under the REDD banner, as a means of supporting their activities to end forest destruction and to promote community access and *adat* rights to the forests.

AMAN was another organisation that adopted a mixed strategy towards the REDD initiative. It used the slogan 'No Rights, No REDD' to highlight the link between forest tenure reform and efforts to reduce emissions from deforestation. It engaged actively in an international anti-REDD campaign, arguing that REDD would negatively affect indigenous communities, given that the Indonesian government was yet to acknowledge customary land rights. On the other hand, AMAN was willing to provide a letter of support to the government of Indonesia during its negotiations with the government of Norway. It is not too much to say that this was instrumental in the success of the negotiations between Indonesia and Norway that led to the signing of the LOI of 2010. It allowed the Indonesian government to demonstrate that it had the support of its indigenous peoples, thus satisfying the demands of NGOs in Norway that REDD funds should only be disbursed to governments that were providing legal protection for the customary rights of their indigenous peoples (Purnomo 2012).

The opposition of some civil society organisations to the REDD initiative waned as international funding began to flow and opportunities became available to integrate the civil society agenda on forest tenure reform into the REDD scheme. Norway's REDD fund was intended to support both government institutions and civil society organisations. International funds to prepare the ground for the REDD program in Indonesia helped a number of groups at both the national and regional levels to strengthen their campaigns for forest tenure reform. With international funding support, for example, 17 civil society organisations published a report in 2011 laying out a road map for forest tenure reform in Indonesia (Epistema et al. 2011). Activists used this report to lobby the Ministry of Forestry to change its policy on customary land tenure, and to persuade the REDD+ Taskforce to incorporate the land tenure issue into its work. Activists also successfully lobbied the taskforce to adopt the principle of free, prior and informed consent (FPIC), which required

REDD project initiators to consult local communities and obtain their consent before a project could take place.

Before Yudhoyono established the REDD+ Taskforce, advocates of forest tenure reform had no option but to direct their lobbying efforts towards the Ministry of Forestry. After it was established, however, they shifted their attention to the taskforce and other key government institutions that they hoped could exert pressure for change, including the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) and the Constitutional Court. This led to two significant breakthroughs: official recognition of the existence of villages in state forest areas, and the Constitutional Court ruling acknowledging that the customary lands of indigenous peoples were not state forest.

The first milestone: official recognition of thousands of villages inside the forest area

Even though millions of Indonesians were living in or around state forest areas, the maps used by the Ministry of Forestry since the 1980s as the basis for planning and allocating forest permits had never shown the location of villages. Following many complaints from civil society groups, in 2007 the Ministry of Forestry began to collaborate with the central statistics agency (Badan Pusat Statistik, BPS) to identify all villages in and around state forest areas. They concluded that 31,957 villages were located on the periphery of, in or around state forest areas (Ministry of Forestry and BPS 2007, 2009). In 2011, in a speech to the International Conference on Forest Tenure, Governance and Enterprise in Lombok, the minister of forestry, Zulkifli Hasan, acknowledged that many local and customary communities were living in or earning their livelihoods from state forests. This conference became an important milestone, marking the moment when the Ministry of Forestry and civil society representatives finally entered into a dialogue on the importance of forest tenure reform in Indonesia.

The forest tenure conference held in Lombok in 2011 marked the emergence of the head of the REDD+ Taskforce, Kuntoro Mangkusubroto, as a rising star from the perspective of the participants. He made an impressive speech setting out the need to deal with land tenure issues for the benefit of the rural poor, and acknowledged the fundamental link between forest and land tenure reform and the effort to reduce greenhouse gas emissions:

> Our land encompasses our natural resources. The issue of land tenure undoubtedly influences how we manage our natural resources nationwide as a response to the climate change challenge and for the benefit of the communities living in and around the forests. Improving forest governance and

> land tenure is in line with our effort to reduce poverty, as there are at least 10 million forest-dependent people who live under the poverty line.
>
> Hence, we cannot address the sustainable use of our natural resources if we do not appropriately address the complexities of land tenure—that is, how access is granted to the rights to use, control, and transfer land—as well as define associated responsibilities and constraints. As such, finding the appropriate land tenure arrangement is a prerequisite for sustainable development and livelihood. The issue of land tenure and its linkage to development and people's welfare is what I would like to talk to you about today. […]
>
> There are 33,000 villages which are currently located within or around the forest estate. […] It could be argued that these villages are illegal because they stand on state land. However, people from these villages will claim that they have lived there for generations. Because of this, land tenure conflicts happen and can possibly create uncertainty for development purposes. […]
>
> Land tenure is not a sector-bound issue—it is multi-dimensional in nature. Land tenure relationships are a convergence of social, cultural, technical, institutional, legal, and political forces that push and pull, creating absolute tension. We recognise this tension when we observe, among others, illegal logging, conflict resulting from overlapping land permits, and exploitation of natural resources, women and vulnerable groups (Mangkusubroto 2011).

The Lombok conference led to the establishment of a joint working group involving Indonesian civil society organisations and the Ministry of Forestry to implement forest tenure reform (Minister of Forestry Decree SK.199/Menhut-II/2012 on Creation of the Preparatory Unit for the Macro Plan for Forest Tenure).

The second milestone: Constitutional Court ruling on the AMAN case

To pursue the tenure reform agenda, AMAN used another key institution that had emerged during the reform period, the Constitutional Court. In March 2012, AMAN submitted a petition asking the Constitutional Court to review Law 41/1999 on Forestry. It argued that the law was unconstitutional because it did not take the historical aspects of indigenous claims over customary lands into account and ignored the existence of indigenous peoples' rights over their customary territories (Peterson n.d.).

On 16 May 2013, almost one year after the case was filed, the court accepted parts of AMAN's petition, concluding that the customary lands of indigenous peoples were not part of the state forest area; henceforth, they would be private forest (*hutan milik*) (Constitutional Court Decision 35/PUU-X/2012). This was the most important decision by a court in the history of indigenous land rights advocacy in Indonesia.

Kuntoro Mangkusubroto was among a few officials who openly endorsed the Constitutional Court ruling. In a keynote speech to the

National Workshop on the Implementation of the Constitutional Court Ruling Related to Indigenous People organised by the United Nations Office for REDD+ Coordination in Indonesia, he welcomed the court's ruling while reminding Indonesians that the land claims of indigenous peoples needed to be in line with the government's efforts to conserve Indonesia's forests:

> The implications of this Constitutional Court ruling are significant, particularly on sustainable forest and natural resource management, in terms of the legal certainty and affirmation related to the rights and obligations of land controllers and users. The word 'controllers' here may need to be softened. The most important aspect that we will need next, however, is the maturity of all relevant stakeholders. Maturity arising from the comfort we have had for all these years, and now the time has probably arrived for us to embark upon something which is different from the past. This maturity means an understanding is needed that with the recognition of a right which was forgotten, an obligation has arisen that we all need to comply with. […]
>
> The recognition of indigenous peoples is in line with the implementation of REDD+ in Indonesia, [and with] the principle 'Beyond carbon, more than forests', because not only does REDD+ involve planting and growing trees, it also involves the wellbeing of local communities in the 33,000 villages. They want forests to keep standing, because the forests play a crucial role in improving their wellbeing. […]
>
> I would like to emphasise here that local governments play a crucial role in [designing mechanisms to involve indigenous peoples]. Furthermore, the government should help indigenous peoples understand the principles of good governance—i.e. transparency, participation and accountability […] Indigenous peoples have been recognised as owners of the right to forests [and therefore] have the responsibility to manage the natural resources sustainably (Mangkusubroto 2013).

A new political landscape under the Widodo administration

As the above examples show, the global environmental policy discourse has contributed to the emergence of a national policy narrative that has legitimised the campaign for forest tenure reform in Indonesia. The emergence of REDD initiatives opened the window for coalitions of activists and indigenous peoples to rework the longstanding agenda to achieve tenure reform. As we have seen, support from high-ranking REDD officials contributed to the success of these activists in realising policy change. The historic Constitutional Court decision recognising the existence of *adat* land marked a significant victory for the 'rights camp' and their demand for formal government recognition of indigenous peoples' rights to land.

However, the problem remains of how to translate this significant change in the national political landscape into material changes on the

ground. Implementation of forest tenure reform has encountered a number of obstacles. Many district governments are not keen to support *adat* claims, afraid that this may drive away investors. The formalisation of the Constitutional Court decision into operational regulations is taking time, and many state forestry officials do not want to speed up the process. It is no longer possible to hope for support from sympathetic officials in the REDD+ Agency now that it has been abolished.

Many activists in Indonesia were involved in mobilising grassroots support for Joko Widodo and Jusuf Kalla as president and vice-president during the presidential election campaign in 2014. They had high expectations that state policy on forest tenure would change under a Jokowi-led government. During the election campaign, Jokowi promised that his government would implement changes in the governance structures of access to and control over forests for indigenous and local communities. After he was elected president, he partly fulfilled this promise through a plan to allocate at least 12.7 million hectares in the state forest zone to state forestry projects for indigenous and local communities. This plan is set out in the National Mid-term Development Plan for 2014–19.

Jokowi's intention to streamline government led to his decision to abolish the REDD+ Agency and the National Climate Change Council with effect from 21 January 2015, and to merge the Ministry of Environment and the Ministry of Forestry into a single mega-ministry, the Ministry of Environment and Forestry. Under article 59 of Presidential Decree 16/2015 on the Structure of the Ministry of Environment and Forestry, REDD and climate change issues have become the responsibility of the new ministry. The minister is Siti Nurbaya Bakar, a former bureaucrat with a doctorate from Bogor Agricultural University (Institut Pertanian Bogor) and a member of the Democrat Party (Partai Demokrat). Unlike many former forestry ministers, Siti Nurbaya has reached out to civil society activists and scholars, even involving some in the internal design of her ministry. The feeling in the civil society and academic communities is that, under Siti Nurbaya Bakar, there is still hope to reform the government's forest tenure policy in ways that will benefit indigenous and local communities.

The Ministry of Environment and Forestry also has a new director-general charged with implementing the social forestry program and achieving the target of allocating 12.7 million hectares to indigenous and local communities. Progress has been slow, however, because the process of merging the two ministries has taken a long time. The new director-generals were inaugurated only in May 2015 and the inauguration of the echelon 2 officials (the next level down) occurred only in mid-June 2015.

The new director-general of social forestry, Dr Hadi Daryanto, who was previously secretary-general of the Ministry of Forestry, has invited

a wide range of activists and civil society representatives to assist him in developing new regulations, in order to speed up the process of allocating parts of the forest zone to indigenous and local communities. Ironically, the new regulations are likely to once again centralise the power to issue social forestry permits. The swing of the pendulum back towards a key role for the central government is in response to complaints about the numerous obstacles that activists and local communities have encountered in gaining local government approval for social forestry proposals. Many local politicians are more interested in allocating land for corporate activities than for social forestry projects.

CENTRAL KALIMANTAN

Central Kalimantan was selected as the pilot province for REDD implementation in 2010 by an independent team comprising government and civil society representatives. They concluded that REDD projects had a better chance of success if implemented in this province, partly because the governor of Central Kalimantan, Teras Narang, had been supportive of the REDD initiative (Satgas REDD+ 2014). Even before Central Kalimantan was chosen as the pilot province for the REDD program, Teras Narang had begun to collaborate with Kemitraan, a leading national NGO, to improve governance in the province in the context of the REDD preparatory program.[3] With Kemitraan's support, Central Kalimantan established a REDD+ regional commission (Komisi Daerah REDD+) in 2010, one of the first provinces to do so.

Central Kalimantan has large areas of peatland amounting to around 3 million hectares, or about 50 per cent of the total peatland area in Kalimantan (Wahyunto et al. 2005). The Mega Rice Project developed by the Suharto regime in 1996–97 to grow rice on 1.4 million hectares of peatland forest destroyed extensive areas of peatland ecosystems in the province, without generating any success in developing extensive rice farming. Under the leadership of President Yudhoyono, the Indonesian government began to implement a plan to rehabilitate those ecosystems (Presidential Instruction 2/2007 on the Acceleration of Rehabilitation and Revitalisation of Peatland Areas in Central Kalimantan), with the assistance of Kemitraan and other NGOs (Kemitraan 2015). This was one of the earliest REDD initiatives to be implemented in the province.

Local civil society groups in Central Kalimantan were at first bitterly opposed to the national government's plan to launch the REDD pilot

3 Yudhoyono is listed as one of the founders of Kemitraan. It was established in 2000, before he went on to establish a political party.

program in the province. On 20 September 2011, activists and students marched through the streets of Palangkaraya, the provincial capital, to protest against the plan. They urged the people of Central Kalimantan to reject the REDD program, arguing that it would benefit only outside parties and not the indigenous peoples of Central Kalimantan (Kalteng Pos 2011). The provincial branch of AMAN called for an immediate moratorium on all REDD processes and investments in Central Kalimantan until the government had recognised the rights of indigenous peoples and established a transparent and inclusive process for consulting indigenous peoples (AMAN Kalteng 2011).

Eventually, as local organisations became involved in REDD activities, their objections faded. National organisations such as Kemitraan played an important role in establishing a forum for dialogue between the various stakeholders and in providing avenues for local organisations to become involved in preparations for the national and provincial REDD schemes. Kemitraan also assisted the REDD+ Taskforce with numerous activities that required the involvement of various sections of the community in Central Kalimantan.

The pilot program in Central Kalimantan ran for almost three years (2011–14). Most activities focused on workshops, seminars and meetings to develop the national and regional REDD implementation plans, review and strengthen the regulatory framework, strengthen the implementation of the licensing moratorium, develop baseline maps to support the One Map policy and ensure the involvement of key local stakeholders. Towards the end of this period, in early 2014, seven local organisations received grants to conduct livelihood projects, following complaints that not enough REDD money was trickling down to the village level (Satgas REDD+ 2014). This initiative strengthened local support for the REDD program.

Two important policies underpinning the REDD program—the licensing moratorium and the One Map policy—had relatively little effect in reshaping land tenure arrangements within state forest areas in Central Kalimantan. In 2011, about 4.2 million hectares (33.1 per cent of the total state forest area) in Central Kalimantan was affected by the moratorium (Table 5.3). With funding from Norway, the Central Kalimantan office of WALHI (WALHI Kalteng) carried out monitoring activities in the five districts affected by the moratorium. The head of WALHI Kalteng, Arie Rompas, claimed that the areas of at least 12 concession permits overlapped with the areas covered by the moratorium, and that many more probably remained undetected due to the lack of transparency of the district governments in issuing permits (Forest Watch Indonesia 2014). The fact that about 44 per cent of peatland forest was released from the moratorium between 2011 and 2014 (Table 5.3) gives rise to serious ques-

Table 5.3 Area affected by the moratorium on new licences by type of forest, Central Kalimantan, 2011–14

Revision	Protection forest/conservation area	Peatland	Primary forest	Total
1st revision (Nov. 2011)	2,959,165	1,074,418	179,629	4,213,212
2nd revision (May 2012)	2,959,521	1,030,235	179,548	4,178,304
3rd revision (Nov. 2012)	2,934,783	930,197	171,206	4,036,186
4th revision (May 2013)	2,953,312	585,907	129,761	3,668,980
5th revision (Nov. 2013)	2,957,22	699,010	130,052	3,786,284
6th revision (May 2014)	2,951,294	609,617	129,978	3,690,889
7th revision (Nov. 2014)	2,953,262	599,612	128,137	3,681,010
Change in area between 1st and 7th revisions				
(ha)	–5,903	–474,806	–51,492	–532,202
(%)	–0.20	–44.19	–28.67	–12.63

Source: WALHI and Kemitraan (2015).

tions about the effectiveness of the moratorium as a strategy to reduce greenhouse gas emissions in Central Kalimantan.

Turning to the One Map policy, by the end of its term in 2013, the REDD+ Taskforce had completed the process of gathering the baseline data needed to map Central Kalimantan. It made slower progress with the next step of reviewing concession permits, however, because the power to issue the permits lay with the district heads. The REDD+ Taskforce drew up a plan to conduct a review of concession permits in three pilot districts, South Barito, Kapuas and East Kotawaringin (Sekretariat Bersama REDD+ Kalteng 2014), but Jokowi abolished the REDD+ Agency before this plan could be put into effect.

The international donor funding that has flowed into Central Kalimantan under the REDD banner has been very important for progressing the agenda to reform forest tenure, leading to a proliferation of work on *adat* land claims and participatory mapping. A grant from the Norwegian government for the work of a coalition of national and local NGOs, for example, has helped local communities gain greater access to the forest zone. This collaboration was successful in gaining village forest (*hutan desa*) status from the Ministry of Forestry for a total of 16,245 hectares of land distributed across three villages in Kahayan Hilir, Pulang Pisau district (Kemitraan 2015).

In the area of participatory mapping, WALHI Kalteng claims that a total area of about 1.4 million hectares has been mapped in Central Kalimantan, with the financial support of a number of international donors (not only Norway).[4] My own observations of a number of participatory mapping sites indicate that land-use and tenure arrangements have generally not changed in those areas where the sites overlap with state forest or areas subject to corporate permits. The maps produced through these processes do help to strengthen the position of local communities against corporations, to the extent that they prevent companies from taking the land without providing at least some compensation. The participatory mapping process does not, however, provide local communities with a legal basis to control the land.

Before being abolished by Jokowi, the REDD+ Agency had started to include community-based participatory mapping in the government's REDD initiative. It collaborated with AMAN, for example, in establishing a pilot project in Gunung Mas district to undertake participatory mapping in conjunction with the *adat* community (Satgas REDD+ 2014). AMAN expected that such activities would help to enforce the implementation of the Constitutional Court ruling on indigenous peoples' customary land rights, so it was deeply disappointed when Jokowi abolished the agency and the government-supported participatory mapping process thus came to an end.

CONCLUSION

In this chapter, I have drawn attention to the specific effects of the United Nations' REDD program in the Indonesian context, where local populations claim rights to land in the nation's vast forest areas. The REDD initiative can be seen as opening up a new political arena for Indonesian activists who were attempting to change the land tenure regime. Although many of them disagreed with the carbon market component embedded in the scheme, they also recognised the political opportunity that participation in REDD projects provided to advance the agenda for tenure reform. In other words, for many civil society organisations in Indonesia, the REDD program was less about climate change mitigation than about creating a space to pursue reform of the state forest tenure system. Importantly, the REDD program also helped to improve the transparency of information in the natural resources sector (plantations, forestry and to some extent mining). Although greater transparency of

4 Personal communication with Arie Rompas, director of WALHI Kalteng, 8 July 2015.

information has helped civil society organisations fulfil their role as moratorium watchdogs, it has not been enough to prevent land-use changes, due to the power of district governments to circumvent the national government's moratorium policy.

To some extent, coalitions of activists have been able to make progress at the national level in their attempts to rework the state forest and the system of state territorialisation that sustains it, but they have not been able to make much meaningful progress in having the rights of local and indigenous communities to gain access to and control over forest areas recognised. The forces blocking change come from many directions. One fundamental obstacle is the Forestry Law itself. The majority of the land that would be affected by changes to land-use and land tenure arrangements lies within state forest areas. Unless the government department in charge of state forest, that is, the Ministry of Environment and Forestry, changes the Forestry Law and associated regulations to allow changes to the status of state forest, the Constitutional Court ruling in favour of AMAN will have very little effect on the ground. Moreover, although the government is able to allocate state forest land to local communities under the social forestry program, support from the national, provincial and local levels of government for the program has been lacking, and progress in achieving the social forestry target has been slow.

Until mid-2014, activists mainly relied on sympathetic, high-ranking REDD+ officials to channel their voices and accelerate the implementation of forest protection policies on the ground. Civil society organisations opted for this strategy because they had been unable to break down the walls created by some government agencies, especially the Ministry of Forestry, that had allowed them to seal themselves off from outside influences, making genuine, progressive change slow. Although the REDD+ Taskforce and the REDD+ Agency were sympathetic to activists' demands for forest tenure reform, even they did not have the power to push for significant changes in land-use and land tenure arrangements in the face of stonewalling from other sections of the bureaucracy.

National REDD policies, especially the licensing moratorium, have helped to limit land-use changes, particularly in peatland areas, by preventing some corporations from gaining permits. However, enforcement of the moratorium has been difficult, partly because of a lack of meaningful support from local governments, which have continued to issue plantation and mining permits. This led to the national government's decision to dissolve the district governments' power to issue plantation and mining permits, as well as their authority to manage protection forest (*hutan lindung*) (Law 23/2014 on Regional Government).

The 2014 election has changed the national political terrain in significant ways. Soon after he was elected President Widodo abolished the

REDD+ Agency, upsetting many activists and scholars who regarded it as a progressive institution and appreciated its consultative attitude towards the civil society sector. On the other hand, Jokowi has committed his government to allocating at least 12.7 million hectares of the forest zone to social forestry projects for indigenous and local communities. In addition, advocates of forest tenure reform feel that they continue to have some influence within the current government, as some are now working in the Ministry of Environment and Forestry, and others are working with that ministry to accelerate the social forestry program as the latest strategy to promote forest tenure reform.

REFERENCES

Afiff, S. and C. Lowe (2007) 'Claiming indigenous community: political discourse and natural resource rights in Indonesia', *Alternatives*, 32: 73–97.

AMAN Kalteng (Aliansi Masyarakat Adat Nusantara Kalimantan Tengah) (2011) 'Statement of concern on REDD+ in Central Kalimantan, Indonesia', Indigenous Peoples Alliance of the Archipelago Central Kalimantan (AMAN Kalteng), 17 June. Available at http://www.redd-monitor.org/wp-content/uploads/2011/06/AMAN-Kalteng-17-Juni-2011-on-REDD+-EN.pdf

Anggoro, F.B. (2010) 'Moratorium hutan, peluang atau jebakan?' [Forest moratorium, opportunity or trap?], *Antara News*, 2 June.

Austin, K. et al. (2014) 'Indonesia's forest moratorium: impacts and next steps', World Resources Institute Working Paper, World Resources Institute, Washington, DC, January. Available at http://www.wri.org/sites/default/files/indonesia-forest-moratorium-next-steps.pdf

Borras, S.M., R. Hall, I. Scoones, B. White and W. Wolford (2011) 'Towards a better understanding of global land grabbing: an editorial introduction', *Journal of Peasant Studies*, 38(2): 209–16.

Brockhaus, M., K. Obidzinski, A. Dermawan, Y. Laumonier and C. Luttrell (2002) 'An overview of forest and land allocation policies in Indonesia: is the current framework sufficient to meet the needs of REDD+?', *Forest Policy and Economics*, 18: 30–37.

Busch, J., K. Ferretti-Gallon, J. Engelmann, M. Wright, K.G. Austin, F. Stolle, S. Turubanova, P.V. Potapov, B. Margono, M.C. Hansen and A. Baccini (2015) 'Reductions in emissions from deforestation from Indonesia's moratorium on new oil palm, timber, and logging concessions', *Proceedings of the National Academy of Sciences*, 112(5): 1,328–33.

Butler, R.A. (2011) 'Indonesian official: REDD+ forest conservation plan need not limit growth of palm oil industry', *Mongabay*, 29 April.

Butler, R.A. (2014) 'Indonesia rejects, delays 1.3 m ha of concessions due to moratorium', *Mongabay*, 12 February.

Butler, R.A. (2015) 'Indonesian forestry giant calls for stronger forest moratorium', *Mongabay*, 11 May.

Colchester M., T. Apte, M. Laforge, A. Mandondo and N. Pathak (2003) 'Learning lessons from international community forestry networks: synthesis report', Center for International Forestry Research (CIFOR), Bogor.

Colfer, C.P. and I.A.P. Resosudarmo (eds) (2002) *Which Way Forward? People, Forests, and Policymaking in Indonesia*, Resources for the Future, Washington, DC.
Down to Earth (1999) 'Forest Act fiercely opposed', *Down to Earth*, No. 42, August.
Edwards, D.P., L.P. Koh and W.F. Laurance (2012) 'Indonesia's REDD+ pact: saving imperilled forests or business as usual?', *Biological Conservation*, 15(1): 41–4.
Epistema Institute et al. (2011) 'Menuju kepastian dan keadilan tenurial' [Towards security and justice in tenure], 7 November. English version available at http://epistema.or.id/wp-content/uploads/2015/07/Towards_Certainty_and_Justice_in_Tenure.pdf
Fairhead, J., M. Leach and I. Scoones (2012) 'Green grabbing: a new appropriation of nature?', *Journal of Peasant Studies*, 39(2): 237–61.
Fay, C. and M. Sirait (2002) 'Reforming the reformists in post-Suharto Indonesia', in C.P. Colfer and I.A.P. Resosudarmo (eds) *Which Way Forward? People, Forests, and Policymaking in Indonesia*, Resources for the Future, Washington, DC: 126–43.
Forest Watch Indonesia (2014) 'Siaran pers dalam rangka 3 tahun moratorium hutan' [Press release on the three years of implementation of the forest moratorium], Forest Watch Indonesia, 21 May. Available at http://fwi.or.id/publikasi/siaran-pers-dalam-rangka-3-tahun-moratorium-hutan/
GRAIN (2008) 'Seized: the 2008 land grab for food and financial security', GRAIN Briefing, Barcelona, October.
Jacobson, P. (2015) 'Jokowi must strengthen Indonesia's forest moratorium, not just extend it: activists', *Mongabay*, 25 April.
Kalland, A. and G. Persoon (2008) 'An anthropological perspective on environmental movements', in A. Kalland and G. Persoon (eds) *Environmental Movements in Asia*, Curzon Press, Richmond: 1–43.
Kalteng Pos (2011) 'Puluhan activist tolak REDD+' [Dozens of activists against REDD+], *Kalteng Pos*, 22 September.
Kemitraan (2015) 'Kerjasama antara pemerintah provinsi Kalimantan Tengah dengan Kemitraan periode 2009–2015' [Collaboration between Central Kalimantan province and Kemitraan in the period 2009–2015], Partnership for Governance Reform (Kemitraan), Jakarta, April.
Kompas (2011a) 'Moratorium hanya lindungi hutan primer' [Moratorium protects primary forest only], *Kompas*, 17 February.
Kompas (2011b) 'DPR kritik LSM dukung moratorium hutan' [House of Representatives criticises NGO for supporting moratorium], *Kompas*, 22 February.
Lang, C. (2012) 'Interview with Teguh Surya, WALHI: "We are against REDD. We are against carbon trading"', *REDD-Monitor*, 9 March.
Li, T.M. (2001) '*Masyarakat adat*, difference, and the limits of recognition in Indonesia's forest zone', *Modern Asian Studies*, 35(3): 645–76.
Mahbub, A. (2015) 'Ini isi pidato lengkap Jokowi di COP21 Paris' [This is the complete text of Jokowi's speech at COP 21, Paris], *Tempo*, 30 November.
Mangkusubroto, K. (2011) 'Importance of land and forest tenure reforms in implementing a climate change sensitive development agenda', keynote address to the International Conference on Forest Tenure, Governance and Enterprise, Lombok, 12 July. Available at http://www.rightsandresources.org/documents/files/doc_2483.pdf
Mangkusubroto, K. (2013) 'Keynote speech to the National Workshop on the Implementation of the Constitutional Court Ruling Related to Indigenous Peoples', Jakarta, 29 August.

Maulia, E. (2015) 'Flawed deforest moratorium more of the same, activists say', *Jakarta Globe*, 18 May.
McCarthy, J. (2000) 'The changing regime: forest property and *reformasi* in Indonesia', *Development and Change*, 31: 91–129.
Ministry of Environment and Forestry (2014) 'Peta indikatif penundaan pemberian izin baru (revisi VII)' [Indicative map of the suspension of new licences (revision VII)], Ministry of Environment and Forestry, Jakarta. Available at http://www.dephut.go.id/index.php/news/details/9699
Ministry of Forestry (2014) *Statistik Kementerian Kehutanan Tahun 2013* [Ministry of Forestry Statistics for the Year 2013], Ministry of Forestry, Jakarta.
Ministry of Forestry and BPS (Badan Pusat Statistik) (2007) 'Identifikasi desa dalam kawasan hutan 2007' [Identification of the location of villages inside the state forest area 2007], Ministry of Forestry and Statistics Indonesia (BPS), Jakarta.
Ministry of Forestry and BPS (Badan Pusat Statistik) (2009) 'Identifikasi desa di dalam dan di sekitar kawasan hutan 2009 [Identification of the location of villages inside and around the state forest 2009], Ministry of Forestry and Statistics Indonesia (BPS), Jakarta.
Murdiyarso, D. (2014) 'Insight: merging environment and forestry ministries: quo vadis?', *Jakarta Post*, 7 November.
Murdiyarso, D., S. Dewi, D. Lawrence and F. Seymour (2011) 'Moratorium hutan Indonesia: batu loncatan untuk memperbaiki tata kelola hutan?' [Indonesia's forest moratorium: a steppingstone for the improvement of forest governance?], CIFOR Working Paper No. 76, Center for International Forestry Research (CIFOR), Bogor.
Peluso, N.L. (1995) *Rich Forests, Poor People: Resource Control and Resistance in Java*, University of California Press, Berkeley, CA.
Peluso, N.L. and P. Vandergeest (2001) 'Genealogies of the political forest and customary rights in Indonesia, Malaysia, and Thailand', *Journal of Asian Studies*, 60(3): 761–812.
Peluso, N.L., S. Afiff and N.F. Rachman (2008) 'Claiming the grounds for reform: agrarian and environmental movements in Indonesia', *Journal of Agrarian Change*, 8(2–3): 377–407.
Peterson, A.C. (n.d.) 'Indonesia Constitutional Court Decision Number 35/PUU-X/2012: decision summary', Governors' Climate and Forests (GCF) Task Force. Available at http://www.gcftaskforce.org/documents/training/IND_Constitutional_Court_Decision_Summary.pdf
Priyatmono, E. (2015) 'Revisi VIII PIPPIB: Kawasan Moratorium Hutan Bertambah 926.030 Hektare' [Forest moratorium area increased by 926,030 hectares], *Beritasatu*, 27 May.
Purnomo, A. (2012) *Menjaga Hutan Kita: Pro-Kontra Kebijakan Moratorium Hutan dan Gambut* [Protect Our Forests: For and Against the Forest and Peatland Moratorium Policy], Kepustakaan Populer Gramedia, Jakarta.
Rondonuwu, O. and M. Taylor (2011) 'Indonesia forest moratorium softens blow for planters', *Reuters*, 20 May.
Santosa, A. and M. Silalahi (2011) 'Laporan kajian kebijakan kehutanan masyarakat dan kesiapannya dalam REDD+' [Report on a policy study of community forests and their readiness for REDD+], Forum Komunikasi Kehutanan Masyarakat (FKKM), Bogor.
Satgas REDD+ (2014) 'Laporan perkembangan REDD+ Kalimantan Tengah' [Report on the development of REDD+ in Central Kalimantan], REDD+ Taskforce (Satgas REDD+), Jakarta.

Saturi, S. (2012) 'Peta wilayah adat diakomodir masuk One Map Indonesia' [*Adat* maps are incorporated into Indonesia's One Map], *Mongabay*, 15 November.
Saturi, S. (2014) 'AMAN serahkan 4,8 juta hektar peta adat, BP REDD+ wali data sementara' [AMAN submits 4.8 million hectares of *adat* maps, REDD+ Agency is the temporary custodian], *Mongabay*, 25 December.
Saturi, S. (2015) 'Kajian perlihatkan titik lemah moratorium. Pesan: perpanjang dengan penguatan' [Study shows weaknesses of moratorium. Suggestion: extension with improvements], *Mongabay*, 3 March.
Sekretariat Bersama REDD+ Kalteng (2014) 'REDD+ implementation in Central Kalimantan', Central Kalimantan REDD+ Joint Secretariat (Sekretariat Bersama REDD+ Kalteng), Palangkaraya.
Simamora, A.P. (2008) 'Palm oil firms reject forest moratorium', *Jakarta Post*, 27 August.
Siscawati, M., N.F. Rachman and N. Saptariani (2014) 'The struggle of the people to fight back against exclusion and reclaim the access toward forests', Sajogyo Institute, Bogor.
Susanto, I. (2015) 'Presiden Jokowi bubarkan BP REDD dan DNPI' [President Jokowi abolishes REDD Agency and National Climate Change Council], *Kompas*, 28 January.
Tsing, A.L. (2004) *Friction: An Ethnography of Global Connection*, Princeton University Press, Princeton, NJ.
UKP4 (Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan) and Satgas REDD+ (2013) 'Laporan pemantauan Instruksi Presiden No. 10/2011: hasil capaian dan tindak lanjut' [Presidential Instruction 10/2011 monitoring report: achievements and the next step], President's Delivery Unit for Development Monitoring and Oversight (UKP4) and REDD+ Taskforce (Satgas REDD+), Jakarta.
Wahyunto, S. Ritung, Suparto and H. Subagio (2005) *Sebaran Gambut dan Kandungan Karbon di Sumatera dan Kalimantan* [Distribution of Peatlands and Carbon Storage in Sumatra and Kalimantan], Wetlands International–Indonesia Programme, Bogor.
WALHI (Wahana Lingkungan Hidup Indonesia) and Kemitraan (2015) 'Analisis kebijakan penundaan pemberian izin baru dan penyempurnaan tata kelola hutan alam primer dan lahan gambut' [Analysis of the policy on the suspension of new licences and improvement of governance of primary forest and peatland], Indonesian Forum for the Environment (WALHI) and Partnership for Governance Reform (Kemitraan), Jakarta.
Wibowo, A. and L. Giessen (2014) 'Competition between bureaucracies in the forest and its impacts: lessons from Indonesia', paper presented at the Conference on International Research on Food Security, Natural Resource Management and Rural Development, Czech University of Life Sciences, Prague, 17–19 September.
Wolford, W. (2010) 'Contemporary land grabs in Latin America', paper presented at the TNI-sponsored side event to the 36th session of the Committee on World Food Security, Food and Agriculture Organization (FAO), Rome, 12 October.
Zerner, C. (1994) 'Through a green lens: the construction of customary environmental law and community in Indonesia's Maluku islands', *Law and Society Review*, 28(5): 1,079–122.
Zoomers, A. (2010) 'Globalisation and foreignisation of space: seven processes driving the current global land grab', *Journal of Peasant Studies*, 37(2): 429–47.

6 Mining, land and community rights in Indonesia

Kathryn Robinson

Indonesia's immense mineral reserves (tin, nickel, gold, copper and also coal) hold out the promise of economic development for people in many of Indonesia's poor and remote regions. Exploitation of the nation's mineral wealth for the global market began slowly in the colonial period but Indonesia is now 'a key mineral supplier to the global market' with mining contributing around 5 per cent of GDP (Devi and Prayogo 2013: 6). According to the Mining Advocacy Network (Jaringan Advokasi Tambang, JATAM), around 44 per cent of Indonesia's land is currently subject to mining, oil and gas concessions (Siregar 2015), involving both privately owned and state-owned companies and both national and international investors.

Indonesia's mineral deposits tend to be found on land used for generations by rural populations for livelihoods—farming, forest product collection, even small-scale mining—and/or zoned by the state for forest protection (Resosodarmo et al. 2014). These are often marginal peoples, and although they may have developed systems of property rights over the centuries, they usually lack formal, state-recognised title to their land. Disputes over land use and (non-)recognition of land rights have been a distinctive feature of projects to exploit Indonesia's rich mineral resources. As noted elsewhere in this volume (Chapter 3 by Bedner, Chapter 13 by Afrizal and Anderson, Chapter 14 by Potter), much of the conflict over land has its roots in the lack of clarity, or lack of enforce-

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ment, of the legal instruments that permit mining, including regulation of the entry of foreign miners. In other words, disputes over access to and use of the land and its mineral resources are also disagreements over the meaning or the enforcement of laws.

This chapter begins by providing an account of the historical questions of popular sovereignty posed by the mining sector. First, it considers the Suharto period when, in the name of national development, the regime allowed investors to ignore the land rights of local people and indigenous communities inhabiting the lands that were subject to Contracts of Work (Kontrak Karya) with foreign mining companies. This led to a large number of disputes with communities whose lands had been forcibly taken for investment projects, laying the ground for the emergence of indigenous rights groups and indigenous umbrella organisations during the late Suharto and reform (*reformasi*) periods. Second, the chapter considers attempts to address the sovereignty issue during the *reformasi* period. It focuses in particular on the emergence of a new mining regime that has allowed for a wider sharing of benefits under a new licensing system. Finally, the chapter explores the implications of mining development for the people's sovereignty in Sorowako, South Sulawesi. The Sorowako nickel project was originally established by International Nickel Indonesia (PT Inco) and is now operated by PT Vale Indonesia. The development deprived the local indigenous people of their land and land-based livelihoods, leading to endless disputes with the mining company that continue even today.

As the global spirit of corporate social responsibility is diffused to remote mining sites, as local governments become directly involved in the licensing and regulation of companies and as licence holders undergo assessment to ensure their licences are 'clean and clear', mining companies are handling their relations with local communities with more sensitivity than in the past. While this new gloss on the notion of popular sovereignty represents a desire to return more of the profits from Indonesia's mining wealth to the nation, the current climate of 'resource nationalism' (Warburton 2014) has not necessarily ensured that the benefits of mining flow to the people, or that there is more effective regulation and enforcement to ensure greater protection of local people's rights. Indonesia is still searching for more inclusive and flexible ways of addressing the issues posed by mining.

THE ORIGINS OF INDUSTRIAL MINING IN INDONESIA

Exploration and exploitation of the mineral deposits of the archipelago had a small beginning in the latter years of the colonial period (Devi and Prayogo 2013; Van der Eng 2014). Most of Indonesia's deposits were

in remote regions that came under the direct control of the Dutch only late in the colonial period. The mineral-rich mountainous interior of the island of Sulawesi, for example, came under direct colonial control only in 1906, although European naturalists had been exploring the interior from the end of the nineteenth century and mineral wealth was one of their concerns (see, for example, Abendanon 1915–18). Dutch minerals exploration and exploitation became more intense in the Netherlands East Indies after the 1920s (Van der Eng 2014).

As noted in Chapter 1 of this book, the constitution of newly independent Indonesia (the 1945 Constitution) deems that all natural resources are owned by the people to be exploited for their collective benefit. This means that 'ownership of mineral resources in Indonesia is vested in the state' and that 'the legal framework governing mineral development grants the national government the power to decide on all major policy matters in this area' (Emerson, Garnaut and Clunies Ross 1984: 113).

During the first decade of independence, under the nationalist government of Sukarno, there was a hiatus in minerals exploitation, as the government failed to issue regulations for mining investment (Devi and Prayogo 2013: 16). With Sukarno's introduction of Guided Democracy in 1959 (Lev 2009) and the return to the 1945 Constitution, the government acted on a provision in article 33 of the constitution that states that the economy shall be organised as a common endeavour based on the principle of the family, and that branches of production important to the state, and which affect the life of most of the people, shall be controlled by the state. This principle was the basis of the nationalisation of foreign mining (and plantation) interests and the eschewing of foreign investment as a strategy to exploit the nation's natural resource wealth.[1]

When it took power in 1966, Suharto's New Order government immediately began to solicit foreign investment to exploit the country's rich mineral wealth. While it brought many state-owned mining companies together under a new state-owned enterprise, Persero Aneka Tambang (PT ANTAM), the new government also sought foreign investment and knowhow to overcome a presumed lack of domestic ability to tap Indonesia's resources. This approach exemplified the New Order philosophy of 'development'—*pembangunan* (Van Langenberg 1986).

Hence, the Suharto government moved quickly to overturn the nationalist and nationalising policies of the Sukarno regime and set in

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1 Land reform and the land rights of ordinary Indonesians were hot political issues during the Sukarno period, with the communist-affiliated farmers' organisation, Barisan Tani Indonesia (BTI), urging unilateral action (*aksi sepihak*) by tenants to occupy landlord-owned land. This was in stark contrast to the climate that emerged after the 1965 alleged coup.

place legal instruments to facilitate the entry of foreign multinational mining companies. Law 1/1967 on Foreign Investment gave a guarantee of no nationalisation, granted generous tax concessions and provided for profit repatriation and 30-year terms, all attractive to mining investors (Robison 1986: 138–9). Law 11/1967 on Basic Regulation of Mining (the 1967 Mining Law) established the principal legal instrument regulating the relationship between the Indonesian government and the foreign company that had the status of contractor to the government: the Contract of Work (CoW). The CoW guaranteed security of tenure from exploration through to production; long leases that could be renegotiated; and stable royalty rates (Gandataruna and Haymon 2011).

Eager to create a model capitalist economy but inexperienced in negotiating deals with foreign multinational miners, the new regime allowed the first foreign investor, in the Freeport copper mine in Papua, to write its own contract, on terms that were very favourable to the company (Devi and Prayogo 2013: 19). Freeport, and the companies that followed, did not have to carry out environmental assessments or pay compensation to dispossessed communities. While the terms of subsequent generations of contracts moved a little in favour of the Indonesian government with respect to revenue (Emerson, Garnaut and Clunies Ross 1984: 114), they did not extend greater benefits to local governments or local communities. Altogether, there were eight generations of CoWs, the last being signed in 2008 (Gandataruna and Haymon 2011: 222).

The constitutional assertion that all natural resources belong to the people was interpreted by the Suharto regime as a right and obligation to 'free up' (*membebaskan*) the land necessary for mining projects.[2] Under the 1967 Mining Law, landowners could not refuse entry to miners if a 'fair' amount of compensation had been agreed upon (Gandataruna and Haymon 2011: 227). In the areas where mining companies operated, land rights tended to be defined in terms of customary law and practice, not by formal title. As we will discuss below, in the case of the Sorowako nickel project, the district government took a paternalistic approach to the welfare of the local indigenous population and negotiated away the people's rights—still a source of conflict some 50 years on. This sort of denial of customary rights and disregard for land-based livelihoods was a feature of all the mega-mining projects of the period, most infamously the massively lucrative Freeport mine in Papua (Abrash 2001).

The Suharto government protected foreign companies from the inevitable protests of rural communities who felt their land had been taken from them without proper consultation and compensation, and without

2 See Fitzpatrick (2008) for a discussion of land relinquishment under the New Order.

their informed consent. Government officials and the military dealt with such protestors swiftly and often brutally (Robinson 1986: Ch. 7; Abrash 2001).[3] Despite the promises of development through a 'trickle down' of benefits to landowners in mining sites, the process of dispossession of customary owners and the disruption of rural livelihoods without compensation led to conflict and often to immiseration of the peoples living in these territories. Indonesia's recurring land and natural resource conflicts in Indonesia 'are rooted in the lack of recognition of indigenous land rights and the different tenure systems recognized by local communities and the state' (Moniaga 2007: 276).

Mines tend to be established in areas remote from the centre of government. Here, the relatively powerless local governments of the New Order period, who received little direct revenue from the mines, left the companies alone to order their own affairs. Companies engaged in their own spatial planning, at times encroaching on areas outside their concession areas, and actively policed their territories using private security forces. In the case of the Sorowako nickel project, for example, PT Inco enforced a ban on keeping buffalo, and on burning forest to prepare swidden rice fields, on lands adjoining the concession area. It has recently been revealed that the company also occupied an area of land that was outside its concession area. The impact on the local subsistence economy of the company's activities went beyond the immediate impact of land appropriation. Environmental pollution of the air, waterways and soil affected livelihoods as well as health, laying the grounds for claims to compensation.

Mining developments make extensive use of land, not only for the mines, but also for roads, ports, settlements and processing facilities, including tailings dumps. While this can result in infrastructure development that benefits (some) local people (such as roads, water and electricity plants, schools and health services), it is the companies that determine the way land is used and that decide who can use the facilities developed on the land taken from local landowners.

Despite the loss of land-based livelihoods associated with the development of mines, neither the national government nor regional governments negotiated compensation on behalf of local communities or put in place regulations to ensure that they benefited directly from the mining in their areas. Direct benefits (royalties) flowed mainly to the central government in accordance with government policy and the terms of the CoWs, and while the government increased spending on services

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3 Journalist Peter Polomka (1971: 110–11) provides a first-hand account of the active role the Indonesian military took in ordering the economy in the years after the alleged coup in 1965.

(health and education in particular) that benefited the residents of mining regions, there was little of the presumed 'trickle-down' effect promised by the state. On the contrary, recent analysis of long-term trends shows that countries with a high dependence on mining income tend to have 'lower levels of general health and educational attainment than expected for their income level' and that this holds for a comparison of regions across Indonesia (Edwards 2016: 33).

Unlike some other resource-rich developing nations, Indonesia did not require foreign companies to plan ahead for mine closures in their CoWs, a responsibility that would have forced them to think more carefully about the impact of their activities on the local environment and economy, and to manage their mines in a more sustainable manner—in terms of both the economy and the environment. At the same time, the absence of spatial planning by government (save for carving out concession areas) led to the disruption, even destruction, of existing local economies and to a lack of integration of mines and associated economic activities into the local economy. The opportunity to integrate local economic practices and actors into supply chains, build capacity among local contractors and assist local farmers and entrepreneurs to take advantage of the opportunities provided by improved transport infrastructure was therefore lost.

Towards the end of the New Order, communities began to assert their rights over land within mining concession areas, supported by non-government organisations such as the Indonesian Forum for the Environment (Wahana Lingkungan Hidup Indonesia, WALHI) and the Legal Aid Foundation (Lembaga Bantuan Hukum, LBH). This fed into the formal articulation of these claims through indigenous rights umbrella groups such as the Indigenous Peoples Rights Advocacy Network (Jaringan Pembelaan Hak-Hak Masyarakat Adat, JAPHAMA), established in 1993, which led to the formation in the *reformasi* period of the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN), in 2003 (Moniaga 2007; see also Chapter 4 by Fay and Denduangrudee).

MINING IN THE REFORM PERIOD

In the post-Suharto climate of *reformasi*, critics argued that more of the benefits of large foreign investment projects should go to the Indonesian people, rather than flowing out of the country. This and the build-up of complaints about the denial of customary rights led to calls for reform of the mining sector. In direct response to the centralised power exercised by the New Order, the dominant political catch-cry during the heady days of the early reform period was 'empowerment' (*pemberdayaan*) as a

counter to the 'guidance' (*pembinaan*) that had been a cornerstone of New Order politics and social policy.[4]

Many of the communities who felt their land rights had been trampled on took the opportunity to reopen their claims for compensation (see Chapter 11 by Neilson). Hand-painted signs stating that a plot of land belonged to the people (*milik rakyat*) began to appear alongside land that had been 'freed up' for agribusiness, mining and other commercial activities.

Marking a decisive break with the centralised New Order regime, the national government embarked on a 'big bang' decentralisation that shifted political authority for most areas of government policy from the centre to the districts (Crouch 2010: 92). Law 22/1999 on Regional Government devolved responsibility for managing the nation's resources to the districts (article 10(1)) (Fox, Adhuri and Resosudarmo 2005); and Law 25/1999 on the Fiscal Balance between the Central Government and the Regions and Law 33/2000 on Regional Taxes and Levies increased the ability of the newly empowered district governments to raise revenue from mining (Resosudarmo et al. 2009: 36). Until the Mining Law was revised in 2009, the instrument district governments used to regulate mining was the mining authorisation (*kuasa pertembangan*) issued to domestic miners.

District governments were quick to jump on the mining bandwagon, seeing mining permits as an easy way to make revenue and to collect illegal levies to fund election campaigns. This rush of activity intensified following the implementation of direct elections for district heads. In Morowali district, Central Sulawesi, for example, the district head was able to contribute handsomely to his own, and his party's, election funds by issuing exploration licences over areas that overlapped with those of PT Vale. PT Vale is suing him over the encroachment on its CoW, and the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) is investigating him for activities related to the issuance of these permits (Santosa 2012a, 2012b).

Morowali was just one of many resource-rich districts that sought to capitalise on their mineral wealth under decentralisation. However, many of them lacked the administrative capacity (or will) to properly regulate mining. Permits were granted to local entrepreneurs who lacked experience and capability, often without an official record being made of the transaction (Gandataruna and Haymon 2011). Overlapping licences became a common problem.

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4 This discursive shift was evident, for example, in the change of name of the women's ministry from Menteri Peranan Wanita (Ministry for the Role of Women) to Menteri Pemberdayaan Perempuan (Ministry for Women's Empowerment) in 1999.

Local entrepreneurs teamed up with foreign companies, also often inexperienced in the sector, to export unprocessed ore. Little regard was given to local land rights or to environmental protection in establishing these ventures. The period coincided with the global resources boom that began in the late 1990s, which brought record prices for ore, including the low-grade lateritic nickel reserves on the island of Sulawesi. In Southeast and Central Sulawesi provinces, Chinese companies loaded ships with soil containing unprocessed lateritic ore, exporting it from ports that had often been constructed illegally close to the mining areas. In the process they destroyed protected mangrove forests and damaged local people's fishing grounds. In the heyday of the resources boom, the port of Kolaka in Southeast Sulawesi, where the government-owned ANTAM mining company had previously exported processed nickel, saw ships lining up to carry the nickel-bearing earth to refineries in China. Such practices gave rise to the expression 'selling the land and water' or 'selling the homeland/nation' (*jual tanah air*)—a wordplay on the common metaphor for the nation, 'land and water' (*tanah air*). Despite the huge upsurge in activity, local communities received little in the way of benefits. The use of illegal ports meant that the mining companies could avoid paying royalties and taxes. Government officials also suspected that, by exporting the raw unprocessed ore, mining companies were getting access to trace minerals of significant value, for which they were not paying royalties.[5]

Since 1999 mining companies have been required by law to obtain lease-use permits (*izin pinjam pakai*) from the Ministry of Forestry as a prerequisite to engaging in exploration and extraction activities in areas categorised as production forest zone (*kawasan hutan produksi*). Although this has proven difficult to implement, the Ministry of Forestry has established forest management units in the districts in an attempt to better regulate the areas within its jurisdiction (Resosudarmo et al. 2014: 275–6).

Especially during the resources boom, the revenue derived from mining, oil and gas allowed local administrations to improve living standards by funding local development. In resource-rich Kutai Kartanegara district in East Kalimantan, for example, the district government used the additional revenue to increase teachers' salaries and to make education free for all children (Crouch 2010: 102).

The 2009 Mining Law

Mining contracts came under scrutiny early in the *reformasi* period. In an apparent expression of resource nationalism, the Indonesian govern-

5 This information is based on ongoing research in Southeast Sulawesi (see footnote on page 141).

ment signalled that it would no longer sign CoW agreements but would move to a new system that would return greater benefits to the Indonesian nation. The legislation was a long time coming and in the meantime there was a hiatus in new foreign mining investment, at least under the CoW system.

Law 4/2009 on Mineral and Coal Mining (the 2009 Mining Law) set aside the CoW system, which regulated only foreign corporations, in favour of a new licensing system in which both foreign and local companies could obtain mining licences (*izin usaha pertambangan*, IUP). The law stipulates that the government must continue to honour existing CoWs until their expiry date, while allowing the government to negotiate key clauses and adjust them in accordance with current regulations. The main areas of negotiation include the amount of the contribution paid to the country; the size of the mining area; conditions of divestment, or operational continuity, under a licence after contract expiry; the level of obligation to undertake local processing and refining; and the level of obligation to use domestic goods and services (Cahayafitri 2015).

The 2009 Mining Law gave responsibility for the regulation of mining to the district level of government (although the districts could not sign contracts with foreign companies). This resulted in a series of overlapping and often contradictory regulations as district governments implemented their own regulatory regimes. The number of mining licences issued by local governments had increased sharply after the regional autonomy laws were passed, from 597 in 2000 to over 10,000 in 2011. According to Resosudarmo et al. (2014: 276–7), the majority of these licences were problematic. The problems included licences that had been issued without following proper (national) procedures, licences that had been issued over overlapping areas or activities, and licences that remained in force even though the mining companies had failed to meet their rent and royalty obligations. Resosudarmo et al. (2014: 276) concluded that 'the issuance of scores of mining licences without due regard for central government regulations and procedures, and often overlapping with other permits, [had] led to uncontrolled extraction of mineral resources, serious environmental problems, economic losses to the government, social conflict and business uncertainty'. Responding to such concerns, in 2014 the national government took away the power of district governments to issue mining licences (Law 23/2014 on Regional Government).

The ministry with the job of supervising the management of the nation's mineral resources, the Ministry of Energy and Mineral Resources, now requires all licences issued by local governments to be reported to the ministry, and licence holders to undergo assessment to ensure their licences are 'clean and clear'. To obtain 'clean and clear' status, a company must be able to demonstrate that its licence was obtained through

the correct administrative procedures, that the licence does not overlap with other licences, that the company has a lease-use permit for the use of forest lands and that the company has fulfilled its rent and royalty obligations (Resosudarmo et al. 2014: 277). Permits to export are linked to possession of 'clean and clear' status. In July 2013, 5,957 of 10,884 licences had been classified as 'clean and clear' (p. 278).

The ban on unprocessed ore exports that came into force in January 2014 put an end to the cowboy companies that were taking away raw unprocessed ores (low-grade lateritic nickel-bearing soil from Southeast Sulawesi, for example). These companies went down to the wire, trucking out and exporting ore-bearing soils right up to the final date specified in the legislation. They then left abruptly, leaving behind unremediated mine sites, unpaid wages and benefits, and unpaid hire fees to local contractors. In Southeast and Central Sulawesi, they also left behind scores of illegally constructed ports, ruined mangrove forests and damaged fishing grounds.

While the 2009 Mining Law contains provisions on the divestment of shares in foreign mining companies to Indonesian participants, hence limiting foreign ownership of natural resources, it does not provide any greater protection of local rights, including land rights, than the 1967 Mining Law. In the event of mine closure, the law requires environmental remediation, but it does not require advance planning to mitigate the effects on the local economy.

The more restrictive conditions placed on foreign investors by the 2009 Mining Law have been labelled 'resource nationalism', interpreted either negatively as an attempt by the government 'to assert greater control over resource sectors at the expense of foreign investors' or, more positively (and less commonly), as 'a means to give citizens a larger stake in their own finite resources' (Warburton 2014). Warburton comments that a better term might be 'resource regionalism', as district governments have taken advantage of the changing legal situation to assert their rights to control, and to benefit from, mining investment. The rise of resource regionalism has not, however, ensured that more of the benefits from mining flow to the people, or that there is more effective regulation and enforcement to secure greater protection of local people's rights.

People's mining (*tambang rakyat*)

Small-scale mining has expanded dramatically since decentralisation (see Chapter 2 by Peluso), encouraged by district governments that view it as a way to extract revenue. This sector has proven very difficult to regulate. It is often characterised by 'boom and bust' cycles in which migrant miners descend on an area where there are stories of mineral

finds, compete to extract the resource and then depart as quickly as they came. Small-scale and artisanal miners typically seek to extract gold, silver and manganese—there is no small-scale process for extracting low-grade nickel ore. Work practices are often unsafe, involving, for example, the excavation of rickety tunnels or 'rat-holes' (*lubang tikus*) or the use of dangerous chemicals such as mercury to extract gold. The ores themselves can be dangerous to handle, as is the case with manganese; and there are reports of the use of child labour.

Land is a contentious issue in this sector. The migrant miners who follow the ore discoveries (and typically have technological expertise) continue to come into conflict with local landowners over rights of access. However, the possession of an IUP from the district government under the new licensing regime is no guarantee of smooth relations with landholders, because governments no longer have the power to take away the land rights of people living in areas where ore can be extracted using simple technologies. Article 135 of Law 4/2009 states that the holder of an IUP for exploration can undertake activities only after obtaining the agreement of the landholders. In Southeast Sulawesi at least, this has led to the development of a system of partnerships between IUP holders and landowners, in which the profits from mining are shared. This reflects a longstanding practice of outsiders sharing benefits with locals in return for access to, for instance, timber-bearing land. This system implies a de facto acknowledgement of local land rights and notions of justice, even if the landholders do not hold formal title to the land.

Although the company holding an IUP is responsible for environmental rehabilitation, this requirement is not strictly enforced. These small-scale mining enterprises continue to employ the same unsafe working practices used under the previous system. So, while there seems to be more protection of local land rights, this does not extend to the protection of local communities' land-based livelihoods, or to the protection of those livelihoods into the future.

SOROWAKO, SOUTH SULAWESI: MINING AND THE PEOPLE'S SOVEREIGNTY[6]

Sorowako in the New Order period

The Sorowako nickel project in South Sulawesi, operated initially by PT Inco, a subsidiary of International Nickel Company of Canada, was

6 This section is based on ongoing research in Sorowako beginning in 1977, and currently the subject of an ARC Discovery Project (see footnote on page 141).

officially opened in 1977 by President Suharto and began production of nickel matte from its smelter in 1978 (Robinson 1986). It was one of the so-called second-generation projects, after the first-generation contract establishing the Freeport mine in Papua in 1967. The company's concession area comprised 190,150 hectares, spread over the provinces of South, Central and Southeast Sulawesi, although its facilities (housing, smelter, airport, port and later hydroelectric scheme) were all in South Sulawesi. The company's first CoW ran for 30 years and was renegotiable (Robinson 1986: 99). The contract was renegotiated in 1996 to run until 2025. The terms of the contract were then altered in 2014 to bring them in line with the 2009 Mining Law. The location of the current mining concession (owned by PT Vale) is shown in Figure 6.1.

The nickel project led to the dispossession of the indigenous people living on the shores of Lake Matano—the original inhabitants of Sorowako (*orang asli Sorowako*)—who lost their customary farming land and forest reserves. This was not just because of the location of the mineral deposits in relation to their productive lands, but also because the mining company decided to build a company town, including a golf course for recreational use by employees, on the land closest to the existing residential village.[7] The village was squeezed into a narrow space between the concession area and Lake Matano, allowing limited room for expansion.

'Resistance was futile', as the saying goes. The military was in place to assist the foreign company to begin exploration. This was not long after the 1965 alleged coup and subsequent mass killings of 'communists'. The indigenous inhabitants had only recently returned from the refugee camps to which they had been forcibly moved by Darul Islam rebels in the period 1952–65 (Robinson 1983). In the political climate of the 1970s, all protest would be harshly dealt with.

Bulldozers opening roads to the mine sites destroyed irrigation channels, leaving the villagers' irrigated rice fields (*sawah*) uncultivable for two years. Local leaders attempted to negotiate compensation for lost livelihoods, travelling to the distant district capital of Palopo, reached by ship from the port of Malili. They were detained (*ditahan*) in Palopo while the company and the district government negotiated the sale of the villagers' *sawah*, dry crop plantations and animal pasture (Robinson 1986: 178–91). There was no discussion of payment or compensation for the loss of the village commons, including the jungle in the nickel-bearing

7 A town planning consultant had recommended against this site, suggesting that the nearby Wawondula plain (with more land and fewer inhabitants) would be more suitable, but he was overridden by the local manager, who wanted the new town to take advantage of the picturesque views and recreational opportunities of the lake.

Figure 6.1 Location of Sorowako and the PT Vale mining concession in Sulawesi

hills where the villagers cultivated swidden fields, collected forest products and hunted deer; only grazing land and fields under cultivation and were paid for. However, the villagers did manage to resist the suggestion that they vacate their village land and settle elsewhere.

They also attempted to protest against the meagre price they were being offered for their land, the lack of any compensation for lost livelihoods into the future and the fact that they had been locked out of negotiations. In the absence of the customary leaders, detained in Palopo, it was assumed there would be no resistance. But in spite of being urged by the military, even at gunpoint, to accept the money, around 60 of the 200 or so landowners refused to do so. This was the beginning of a saga of disappointed expectations and conflict between the mining company and the local people, primarily over the loss of land and livelihoods without adequate compensation (Robinson 1986).

Despite their dissatisfaction with the level of compensation, the *orang asli Sorowako* initially held high hopes for the nickel project. The area had long been known as a source of minerals. Their ancestors had smelted iron ore since at least the fifteenth century and Sorowako was one of the areas of origin of the famous Luwu iron (*besi Luwu*) used in the manufacture of the distinctive Javanese knives known as *pamor keris* (Reid 1990: 110). Industrial mining had begun in the 1940s, within the living memory of the older people.[8]

They therefore approached the new development with optimism, anticipating that they would find new occupations with the mining company. This was true during the initial phase of exploration and construction, but proved more difficult as the need for unskilled labour fell away (Robinson 1986: 135). As time went by, the people began to feel a sense of anxiety and crisis about their disempowerment and the difficulty of pursuing a livelihood.

In this region—remote from the then seat of local government, Palopo, and even more remote from the nation's capital, the recipient of the region's mining royalties—the district government left social, economic and spatial planning to the mining company. Issues relating to land use and environmental degradation, such as pollution of water sources by run-off from mining sites and by sewage from the company's residential areas, triggered conflict between the mining company and the local people (Robinson 1985, 1986).

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8 After an unpromising start, the Celebes Mining Company (Mijnbouw Maatschappij Celebes) began operations (exploration and mainly surface collection of ore) around Lake Matano in 1941. The mine was taken over by the Japanese during the occupation, but there was no further activity until the late 1960s (Robinson 1986: 78–9).

At the same time, the loss of their lands and livelihoods strengthened the sense of identity of the *orang asli Sorowako* as an indigenous people with rights that encompassed customary rights to land. Their ancestral estate included agricultural lands and pastures, as well as forest for foraging, hunting, collecting commodities such as rattan and dammar resin, and opening up the new 'slash-and-burn' dry rice fields. Through the assertion of an indigenous identity, as *orang asli Sorowako*, they distinguished themselves from the thousands of migrants who had come to the region seeking work and other economic opportunities.

Because of their sacrifice in relinquishing the land that was the basis of the company's economic activities, the *orang asli Sorowako* felt a strong conviction that they had a special right to benefit from the mining project. This was acknowledged in part in an agreement negotiated with the mining company in 1978 (the year the plant began commercial production), in which PT Inco doubled the amount of compensation as an expression of appreciation of the indigenous people's willingness to give up their land. But this was not seen as sufficient recognition and recompense, and the indigenous Sorowako people would continue to insist that they should be given priority in employment and other privileges.

The company negotiated a series of agreements with the indigenous Sorowako people over the years in recognition of their special rights. Management's guarantees of employment were not always honoured, and by the end of the Suharto era very few indigenous people had obtained permanent employment with the mining company (Robinson 1999), even though over 300 of them had become university graduates. Management had agreed that local contractors would be given privileged access to contracts, but this agreement too seems to have been fragile. The discussions on privileged access extended to the schools set up for employees' children and the hospital established to serve employees, with demands that all indigenous people be given access to these facilities regardless of whether or not they were company employees or the family members of employees.

Such agreements were reached on numerous occasions—often after a community protest when the indigenous people blocked the road on the narrow lakeside strip that the managers had to traverse on their way home from work, and held them captive until agreement had been reached. These agreements were never implemented to the satisfaction of the local people, leading to discontent, new protests and fresh demands for priority in employment, privileged access for local contractors, access to company schools and improved disposal of sewage from the company town site.

Another significant consequence of the mining company being left free to order its own affairs was that it imposed restrictions on how land

could be used, resulting in severe limitations on the kinds of alternative economic activities that local people could undertake. In the 1970s, people who kept buffalo in the fields adjacent to the company's concession area risked their animals being shot. The way that land was locked up in the concession area limited the opportunities for the local people to grow cash crops such as cacao and pepper, or to undertake other economic activities.

Sorowako in the post-Suharto era

What has happened in Sorowako since the fall of Suharto in 1998? Reflecting shifts in global economic structures, Brazilian mining company Vale bought International Nickel Company of Canada (the parent company of PT Inco) in 2006, and its Indonesian subsidiary, PT Vale, now operates the licence (PT Vale Indonesia 2014). The massive district of Luwu was split into three districts and one municipality (Palopo), and the area around Lake Matano is now under the administration of East Luwu district with its capital in Malili. The mining company continues to make a large contribution to the GDP of the district of East Luwu—the mining sector contributed 71.6 per cent of the district's GDP in 2012 (BPS Luwu Timur 2012), most of which would have been from PT Vale—making this one of the wealthiest districts in the wealthy province of South Sulawesi.[9]

Under the 2009 Mining Law, PT Vale's CoW was renegotiated in 2014. The company had to relinquish some of its land, reducing its concession area from 190,510 hectares to 118,435 hectares; it was also required to pay higher royalties (effective immediately) and divest shares on the Indonesian stock exchange (Kiernan 2014).

Sorowako is a one-industry town, and the size of the mining venture has grown considerably over the years as the company has added new smelters and opened up new mining areas within its concession. The company asserts that the economic activity the mine induces creates five local jobs for every one person employed by the company, but these activities are all dependent on the presence and continuing operation of the mine. Since decentralisation, more of the revenue from mining has flowed into local government coffers, allowing the East Luwu district government to spend more on improving infrastructure in this frontier

9 Edwards' (2016) conclusion about the lack of a positive impact of mining on education seems borne out in East Luwu, which is one of the poorest performers in South Sulawesi in terms of education, in spite of being one of the wealthiest districts (Robinson 2012). This explains the indigenous people's demand for access to the schools established by the mining company: they want their children to get a good education so they can find employment.

region. However, there is little sign of the emergence of other economic developments that might replace the mine when it eventually closes.

The 1967 Mining Law had nothing to say about mine closures, and the 2009 law addresses this issue only in terms of restoration of environmental damage. But in Sorowako—now a modern town with a significant middle-class, educated population—there is much concern about the extent of the company's control of land and economic activity. Agriculture is the obvious alternative activity and in the neighbouring towns and districts a pepper boom is under way. In Sorowako, however, the prospects for farming are limited by the company's domination of the landscape.

The company has in fact relinquished small parcels of agricultural land within its concession area to the local people. Older people and others are cultivating the *sawah* again, in the areas between the fairways of the golf course and between the company town and the lake, but on a loan basis. Their agreements with the company stipulate that they must relinquish the land if asked to do so, and that they undertake not to sue the company if hit by a golf ball.

It seems that the gates of the company have opened up more widely to the indigenous people. Young graduates are finding employment with PT Vale, though not at sufficient rates to soak up the large numbers returning from Java with degrees, usually in subjects they think will fit them to work for the mining company, such as engineering, chemistry, medicine or accounting (Robinson 2012). One might ask why these young educated people return at all. The *orang asli Sorowako* are devout Muslims and many of the younger generation are living middle-class lifestyles with professional employment. Nevertheless, they retain a consciousness of their identity as indigenous people and their ties to place are strong. One of their strong concerns is that the enclosure of the village has made it difficult for them to obtain house sites. The third generation of *orang asli Sorowako* since the development of the mine share the sentiment of their parents and grandparents that they possess rights as the indigenous inhabitants of the area and that the company has an obligation to compensate them for the loss of their traditional lands and livelihoods.

The issue of compensation, and the unresolved problem of the 60 or so people who refused to take the money offered in the 1970s, has arisen again in the *reformasi* period. In the new climate of free speech and democracy, the *orang asli Sorowako* felt empowered to reopen this issue, and to bring into the open the representative organisation they formed in the 1990s to defend their rights (Kerukunan Warga Asli Sorowako, KAWAS). In response to their demands, the company and the district government negotiated a settlement that included the release of residential land in a new lakeside suburb within the concession area, with the land to be given to the people on the original list of landowners. The land

that the indigenous people control, like the land owned by migrants, is residential land used for housing. The savings of employees and local residents alike are now generally tied up in housing.

Locals are concerned about the economic sustainability of the region, particularly after the mine closes. Younger people are urging the mining company and the district government to examine the possibility of tourism development, to take advantage of the beautiful natural environment (including protected forests elsewhere in East Luwu district) and the potential for water sports. Sorowako even has a small theme park, Bumu Tambang (Mining World), where mine machinery has been converted to children's play equipment, near the nursery where the company grows endemic and other plant species for use in reforestation of the mining area.

The international climate surrounding mining investment has changed since the 1960s. There is now much greater global scrutiny of mining companies by NGOs, the media and activist shareholders, and greater global recognition of indigenous rights. This is evident, for example, in the requirement for new investors who are seeking financing to adhere to Performance Standard 7 of the International Finance Corporation (IFC) (see Chapter 13 by Afrizal and Anderson).

Land rights, displacement and indigenous identity

The *orang asli Sorowako* were not the only indigenous people to assert their rights to customary land in and around Sorowako after *reformasi*. As noted above, the interior of Sulawesi was controlled by Abdul Kahar Muzakkar's Darul Islam rebels in the 1950s to mid-1960s. This resulted in extensive displacements of local populations, through both involuntary resettlement and exodus, the latter including indigenous people who had embraced Christianity (Robinson 1983). One such group was the Christian Karongsi'e (also known as Dongi), who had once farmed near the shores of Lake Matano. They returned from exile in Central Sulawesi after 2000, squatting in an area within the company concession area and demanding recognition of their rights over land that fell within the area subject to the land sale in the 1970s.

Their case has been handled with more sensitivity than it would have been before *reformasi*, by the company and the local government alike, and has been taken up by advocacy groups such as AMAN. In 2015, representatives of the National Commission for Human Rights (Komisi Nasional Hak Asasi Manusia, Komnas HAM) visited Sorowako to investigate the sad history of the Karongsi'e (Gaung Online 2015). Their story is represented on the websites of many environmental and indigenous rights NGOs as a tale of dispossession by mining. In fact, the real trauma

was their forced conversion to Islam and the burning of their village by Darul Islam, followed by forced exile across the other side of Lake Matano. They were rescued by the Indonesian army before the end of the rebellion and taken to Malili, from where they fled further away into Central Sulawesi. They say they felt emboldened to return only in the climate of *reformasi*.

Meanwhile, the *orang asli Sorowako*—Muslim, educated and in middle-class professions—seem to have become invisible to the national discourse of indigeneity, which draws on global representations of the indigenous that emphasise their position outside mainstream society (Sangaji 2002). In a curious way, regional autonomy, and the expressions of localism it has inspired, seems to have watered down the power of the claims of the *orang asli Sorowako*, rather than strengthening them as has happened elsewhere in Indonesia. The seat of district government is now closer, in Malili rather than distant Palopo. In accordance with the spirit of decentralisation (Crouch 2010), and with the global spirit of corporate social responsibility (CSR), the local government is holding the mining company to greater account for its impact on the social and natural environments. Indonesia has followed this global trend by including CSR requirements in Law 40/2007 on Limited Liability Companies, and by placing particular obligations on resource extraction companies to conduct CSR activities (Government Regulation 47/2012). This includes obligations to engage with the local population (*orang lokal*).

The East Luwu district government requires PT Vale to implement an affirmative action policy of hiring locals, interpreted as people who come from the four subdistricts in which the mining company operates. Following the example of the *orang asli Sorowako,* a number of groups have now formed 'ethnic'-based associations to press their claims for special treatment. The *orang asli Sorowako* still argue for a quota or some form of privileged access to employment on the basis that it was their ancestral lands that provided the key site for the mine and their livelihoods that were destroyed by the development. From their point of view, the people living in the other subdistricts who now benefit from the affirmative action policy for 'locals' have not lost their ancestral lands but have, rather, benefited from the increased economic activity brought by the mine. They do, however, acknowledge that the people on the shores of Lake Towuti have suffered crop losses from rising lake levels following dam construction (Aditjondro 2002: 37).

Mining projects and indigenous rights

The large foreign investment projects that were a hallmark of the New Order, and associated involuntary displacement in the name of develop-

ment, precipitated a movement for local people's rights to land, and the concept of indigenous rights promoted by AMAN has proved an effective vehicle to articulate those rights. This has created the potential for clashes between people who can assert rights based on ancestral connections to land, and newer migrants. Indonesia's population is very mobile, especially in the eastern islands where mineral deposits are found, such as Sulawesi and the Moluccas. While mineral discoveries and the development of mining projects are magnets for migrants, the frontier areas where mineral deposits tend to be exploited are also targets for migrants seeking land for cash cropping. Regional autonomy has promoted an explosion of articulation of localism and local identities, and expressions of chauvinism aimed at excluding outsiders from benefits.

Modern mining corporations adopt CSR practices and codes of conduct, and comply with other standards such as the IFC's Performance Standard 7 on indigenous peoples. The rubric of the 'social licence to mine' means global companies are now more sensitive to their relations with local people. But this discursive shift means that the mining companies (and local governments) also have an interest in beneficiaries not being too narrowly defined, as this, too, can lead to conflict. The term commonly used now to describe people affected by mining development, 'local people' (*orang lokal*), can include, but is broader than, the idea of indigenous peoples (*masyarakat adat*). This term seeks to bind the number of people who need to be considered as direct beneficiaries, but is a little more flexible than the term 'indigenous'. Recent research on processes to define the *orang lokal* in a new mining project in Routa—a subdistrict in Konawe district, Southeast Sulawesi—reveals variety and fluidity in the forms of connection the people put forward as providing a basis for being considered beneficiaries (kinship, common origin, common residence, length of time of residence) (Lio 2015). The practical elaboration of notions of rights in this frontier community points to the limitations of static categories that work on exclusion as much as inclusion, and shows how local communities themselves are arriving at inclusive and flexible ways of addressing the question of how to share the benefits from resource projects.

CONCLUSION

Competing concepts of the people's sovereignty over land have been fundamental to conflicts that have dogged the mining sector in Indonesia. There has been a lack of clarity in regard to both the rights of local communities and the obligations of corporations and the governments that license them. Finding ways to acknowledge local rights and enforce

standards is critical to ensuring that mining can deliver on its promise of bringing greater prosperity to the communities living in the vicinity of mines.

While there has been a recent shift in the regulatory environment to embrace resource nationalism and the idea that more of the benefits of mining should be distributed to the people and the nation, the 2009 Mining Law does not provide greater clarity on the rights of the people whose livelihoods are disrupted by mining. It has been suggested that the restrictions on foreign miners mainly protect national oligarchs. The new requirement tying export licences to 'clean and clear' status aims to protect national interests in terms of revenue and permits, and the 2009 Mining Law is clearer than previous legislation on environmental protection.

The new regulatory environment coupled with regional autonomy has opened up a space for district governments to court foreign investors directly, on the face of it signalling a new platform for the expression of the people's sovereignty. There is some evidence of increased benefits flowing to districts, and the democratic shifts since 1998 and the increased sense of local identity and local empowerment since regional autonomy have meant that there have been stronger assertions of identity and claims for rights. However, local communities' rights have not always been respected or protected, and there is still a lack of regulation to ensure protection of local people's rights.

Mines are most frequently situated in remote areas that are home to people who live off the land. While in many instances these are self-identified indigenous populations who have ancestral connections to the land, it is also often the case that mines are in frontier areas where people have migrated seeking livelihoods.

The global discourse on indigenous people and indigenous rights has highlighted injustices, leading to changes in regulatory instruments, while also influencing the ways in which people claim rights. Mine development can lead to conflict over competing claims regarding who are the 'local' beneficiaries. At the community level, searching for the people's sovereignty in mining regions involves attention to the existing social and economic relations operating in those communities, as well as to both customary rights and the formal rights of citizens. Democratisation has allowed more space for the expression of claims, and corporations and governments are showing greater sensitivity in dealing with such claims. However, the formal processes for resolving land claims in a just and equitable manner have not yet been developed.

REFERENCES

Abendanon (1915–18) Midden Celebes Expeditie: Geologische Geographische Doorkruisingen van Midden Celebes (1909–10) [Central Sulawesi Expedition: Geological Geographical Intersections of Central Sulawesi (1909–10) Vols 1–3, Koninklijk van het Ministere van Kolonial uitgeveven, Leiden.

Abrash, A. (2001) 'The Amungme, Kamoro and Freeport: how indigenous Papuans have resisted the world's largest gold and copper mine', *Cultural Survival Quarterly*, 25(1). Available at https://www.culturalsurvival.org/ourpublications/csq/article/the-amungme-kamoro-freeport-how-indigenous-papuans-have-resisted-worlds-

Aditjondro, G.J. (2002) 'Large dam victims and their defenders: the emergence of an anti-dam movement in Indonesia', in P. Hirsch and C. Warren (eds) *The Politics of Environment in Southeast Asia*, Routledge, London and New York, NY: 29–54.

BPS (Badan Pusat Statistik) Luwu Timur (2012) *Kabupaten Luwu Timur dalam Angka* [East Luwu District in Figures], Statistics Indonesia (BPS), East Luwu district, Malili.

Cahayafitri, R. (2015) 'Contract of Work amendments in limbo', *Jakarta Post*, 29 December.

Crouch, H. (2010) *Political Reform in Indonesia after Suharto*, Institute of Southeast Asian Studies, Singapore.

Devi, B. and D. Prayogo (2013) 'Mining and development in Indonesia: an overview of the regulatory framework and policies', Action Research Report, International Mining for Development Centre, Brisbane. Available at http://im4dc.org/wp-content/uploads/2013/09/Mining-and-Development-in-Indonesia.pdf

Edwards, R.B. (2016) 'Mining away the Preston curve', *World Development*, 78: 22–36.

Emerson, C., R. Garnaut and A. Clunies Ross (1984) 'Mining taxation in Indonesia', *Bulletin of Indonesian Economic Studies*, 20(2): 107–21.

Fitzpatrick, D. (2008) 'Beyond dualism: land acquisition and law in Indonesia', in T. Lindsay (ed.) *Indonesia: Law and Society*, Federation Press, Leichardt: 224–47.

Fox, J.J., D.S. Adhuri and I.A.P. Resosudarmo (2005) 'Unfinished edifice or Pandora's box? Decentralisation and resource management in Indonesia', in B.P. Resodurmono (ed.) *The Politics and Economics of Indonesia's Natural Resources*, Institute of Southeast Asian Studies, Singapore: 92–107.

Gandataruna, K. and K. Haymon (2011) 'A dream denied? Mining legislation and the constitution in Indonesia', *Bulletin of Indonesian Economic Studies*, 47(2): 221–31.

Gaung Online (2015) 'Komnas HAM kunjungi masyarakat adat Karunsi'e Dongi' [National Commission for Human Rights visits customary community of Karunsi'e Dongi], *Gaung Online*, East Luwu, 22 May. Available at http://gaung.aman.or.id/2015/05/22/komnas-ham-kunjungi-masyarakat-adat-karunsie-dongi/

Kiernan, P. (2014) 'Vale to lower stake in Indonesia business', *Wall Street Journal*, 17 October.

Lev, D.S. (2009) *The Transition to Guided Democracy: Indonesian Politics 1957–1959*, Equinox Publishing (Asia), Singapore.

Lio, A. (2015) 'Shifting identities: a case study of Routa sub-district, Konawe regency, Southeast Sulawesi Indonesia', PhD thesis, Australian National University, Canberra.

Moniaga, S. (2007) 'From *bumiputera* to *masyarakat adat*', in J.S. Davidson and D. Henley (eds) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY: 275–94.

Polomka, P. (1971) *Indonesia since Sukarno*, Penguin Books, Melbourne.

PT Vale Indonesia (2014) 'Growing together through operational excellence', annual report, PT Vale Indonesia, Jakarta.

Reid, A. (1990) *Southeast Asia in the Age of Commerce, 1450–1680: The Lands below the Winds*, Yale University Press, New Haven, CT and London.

Resosudarmo, B.P., I.A.P Resosudarmo, W. Sarosa and N.L. Subiman (2009) 'Socioeconomic conflicts in Indonesia's mining industry', in R. Cronin and A. Pandya (eds) *Exploiting Natural Resources: Growth, Instability, and Conflict in the Middle East and Asia*, Henry Stimson Centre, Washington, DC: 33–48.

Resosudarmo, I.A.P., N.P. Oks, S. Mardiah and M.A. Utomo (2014) 'Governing fragile ecologies: a perspective on land-based development in the regions', in H. Hill (ed.) *Regional Dynamics in a Decentralized Indonesia*, Institute of Southeast Asian Studies, Singapore: 260–84.

Robinson, K. (1983) 'Living in the *hutan*: jungle village life under the Darul Islam', *Review of Indonesian and Malay Affairs*, 17(1–2): 208–29.

Robinson, K. (1985) 'The Soroako nickel project: a healthy development?', *International Journal of Health Services*, 15(2): 301–19.

Robinson, K. (1986) *Stepchildren of Progress: The Political Economy of Development in an Indonesian Mining Town,* SUNY Press, Albany, NY.

Robinson, K. (1999) 'Revisiting Inco', *Inside Indonesia*, 15 June.

Robinson, K. (2012) 'Indigeneity, locality and recognition: young people's shifting engagements with modernity in an Indonesian mining town (Sorowako South Sulawesi)', in U. Eickelkamp (ed.) *Young Lives, Changing Times: Perspectives on Social Reproduction*, Department of Anthropology, University of Sydney, Sydney. Available at http://youngliveschangingtimes.wordpress.com/symposium_proceedings/

Robinson, K. (2015) 'Educational aspirations and inter-generational relations in Sorowako', in K. Robinson (ed.) *Youth Identities and Social Transformations in Modern Indonesia*, Brill, Leiden: 69–92.

Robison, R. (1986) *Indonesia: The Rise of Capital*, Allen & Unwin, Sydney.

Sangaji, A. (2002) *Buruk Inco, Rakyat Digusur* [Ugly Inco, the People Chased Away], Pustaka Sinar Harapan, Jakarta.

Santosa, T. (2012a) 'Kasus korupsi petinggi Demokrat di Morowali didukung dokumen resmi' [Case of corruption of high Democrat official in Morowali supported by official documents], *Rakyat Merdeka Online*, 25 May. Available at http://www.rmol.co/read/2012/05/25/65092/Kasus-Korupsi-Petinggi-Demokrat-di-Morowali-Didukung-Dokumen-Resmi-

Santosa, T. (2012b) 'Anak buah Anas Urbaningrum tak takut disangka korupsi' [Protégée of Anas Urbaningrum is not afraid of being accused of corruption], *Rakyat Merdeka Online*, 26 May. Available at http://politik.rmol.co/read/2012/05/26/65077/Anak-Buah-Anas-Urbaningrum-Tak-Takut-Disangka-Korupsi-

Siregar, H. (2015) 'Natural resources are still a target for looting in the name of development', Powerpoint presentation to a workshop on Mining in Indonesia: Local, National and Global Frameworks, School of Culture, History and Languages, ANU College of Asia and the Pacific, Australian National University, Canberra, 20 September.

Van der Eng, P. (2014) 'Mining and Indonesia's economy: institutions and value adding, 1870–2010', PRIMCED Discussion Paper Series, No. 57, Institute of Economic Research, Hitotsubashi University, Tokyo. Available at http://www.ier.hit-u.ac.jp/primced/documents/No57_dp_up_Pdf_2014.pdf

Van Langenberg, M. (1986) 'Analysing Indonesia's New Order state: a keywords approach', *Review of Indonesian and Malaysian Affairs*, 20(2): 1–47.

Warburton, E. (2014) 'In whose interest? Debating resource nationalism in Indonesia', *Kyoto Review of Southeast Asia*, 15. Available at http://kyotoreview.org/yav/in-whose-interest-debating-resource-nationalism-in-indonesia/

PART 3

Urban and infrastructure development

7 Eminent domain and infrastructure under the Yudhoyono and Widodo administrations

Jamie S. Davidson

Judging by President Joko Widodo's (Jokowi's) first year in office, the former furniture salesman is committed to realising his campaign pledge of making swift strides in the improvement of Indonesia's crumbling physical infrastructure. In early 2015 he took the politically bold decision to slash billions from the government's fuel subsidies bill and spend the near entirety of these savings on infrastructure investment. In the 2015 state budget alone, Jokowi allotted a state capital expenditure fund of about Rp 290 billion, up approximately 86 per cent from the Rp 156 trillion the government of his predecessor, Susilo Bambang Yudhoyono, had budgeted (Sambijantoro 2015). This is one way in which Jokowi is striving to distinguish his administration from the sluggish performance of his predecessor's. Yudhoyono had also promised better infrastructure provision, and held an extravagant infrastructure summit less than a hundred days into his first presidency in early 2005. The summit flopped: few private firms, domestic or foreign, bid on the projects on offer and even fewer of the projects were built to completion.

In addition to increased public spending, Jokowi has been prepared to rely more heavily on the state sector and its state-owned enterprises than Yudhoyono had done. The former general had sought greater recourse to the public–private partnership (PPP) concept, a popular policy tool of the World Bank and other international financial institutions. While neoliberals prefer to pin the failure of PPP projects under Yudhoyono on government ineptitude, blame must also be apportioned to the domestic private sector for its intransigence. Firms more often than not dragged their feet in directly investing in projects for which they held the licences;

some preferred rents through the flipping of these permits. In partial response, Jokowi is turning the clock back to the time before the rise of neoliberalism in the 1990s, and its championing of less state and more private sector participation in economic affairs. In the post-World War II era, a range of policy-makers—development specialists of the western powers, neoclassical economists, Marxist-oriented dependency advocates and state elites of the post-colonial world—had believed that the state was the proper entity to overcome the collective action problems of a weak capitalist class and build the roads, ports and other utilities that would induce further private investment in the generation of national industry. There is also little doubt that the phenomenal success of China's state-led model, especially in infrastructure provision, has been influential in Jokowi's change in approach. That said, his primary blueprint, the Master Plan for the Acceleration and Expansion of Economic Development in Indonesia (Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia, MP3EI), which consists of some 90 projects valued at nearly $470 billion, was conceived under Yudhoyono's second administration. The MP3EI is intended to signal the government's commitment to upgrade the country's infrastructure and, importantly, coordinate efforts at the national level as a means to generate growth and improve the economy's global competitiveness. After taking a back seat to trade liberalisation in the policy debates of the 1980s and 1990s, infrastructure has emerged as a crucial policy arena in the promotion of national economic growth.

Despite Jokowi's early breakthrough in sourcing monumental amounts of state funds for his wildly ambitious infrastructure agenda, it appears that he has yet to make a similar breakthrough in another critical aspect of infrastructure provision that holds a key to the program's success: land governance and in particular the involuntary appropriation of land in the name of the public interest. Any discussion of Jokowi's infrastructure agenda that overlooks the politics or policy of eminent domain and its implementation is rendered partial (see, for example, Lane 2015). In fact, I suggest that Jokowi is unlikely to make any breakthrough regarding the implementation of the state's weak powers of eminent domain. First, he lacks the requisite parliamentary support to do so; second, he faces significant time pressure conditioned by the imperative of re-election. Jokowi's infrastructure plans in all likelihood will be constrained by the specific policy legacy in the state's power of eminent domain bequeathed to him by Yudhoyono's administrations and those prior to Yudhoyono, especially Suharto's New Order regime (1966–98). In this light, it behoves us to examine in detail the contours of land governance that Yudhoyono's administrations left behind, with which Jokowi's government has had and will have to grapple.

LAND GOVERNANCE AND INFRASTRUCTURE UNDER YUDHOYONO'S FIRST ADMINISTRATION[1]

The tight fiscal constraints of the first few post-Suharto governments due to the lingering effects of the devastating 1997–98 Asian financial crisis had a considerable depressive impact on investment in the country's infrastructure sector. Thus, when Indonesia's economy had more or less recovered by around 2004, Yudhoyono's first administration was the first post-Suharto presidency to face the following dilemma directly: how would a democratic yet weakened central government go about assembling the public right of way necessary for the building of many infrastructure projects in a fair and equitable manner? This was made all the more pressing by the country's extensive post-Suharto decentralisation program, which devolved land-related (and other) matters to the district level.

Following Yudhoyono's 2005 infrastructure summit, news leaked that during the event investors had informed officials of their reluctance to invest until the country's 'land problem' had been resolved. Investors were referring to the state's inability to appropriate the land necessary for these infrastructure projects in a timely manner. They were wary that delays due to drawn-out negotiations between landowners (or occupiers) and the local government land committees in charge of the involuntary land appropriation process would lead to a spiralling of land costs.

In response to investor concerns, in May 2005 Yudhoyono promulgated perhaps the most contentious decree of his first term: Presidential Decree 36/2005 on Land Acquisition to Realise Development in the Public Interest. It was revealing that it came in the form of a presidential decree. This allowed Yudhoyono to bypass parliamentary input and consent in order to speed up the land acquisition process. He did not want the matter getting drawn into the already prolonged debate over land reform and the contention over the then-new drafts of the revisions to the country's controversial 1960 Basic Agrarian Law (Law 5/1960) in which land rights and tenure security figured prominently (Sumardjono 2005a). In this case, precedent aided Yudhoyono. In 1993, Suharto had signed a presidential decree (number 55/1993) on the same topic; Yudhoyono's decree borrowed the title of Suharto's edict, word for word.

It was not this 'copying' that made Yudhoyono's decree the centre of a firestorm of debate, although, in hindsight, it may have foreshadowed problems to come. Instead, controversy stemmed from the fact that Indonesia's first directly elected president had issued a decree that, on paper, appeared more draconian than its New Order counterpart. Yudhoyono's

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1 Parts of this chapter draw on Davidson (2015).

decree was perceived as spurning the civil society and good governance groups that had backed his campaign and that had lent him valuable support during his administration's early trials and missteps. One reason for the decree's severity was that, unlike under the New Order, his administration could not rely on the army—or other arms of the security apparatus—to clear the land if local resistance proved stiff. Under Suharto resistance was rare because the consequences were known. The state's Coordinating Agency for the Maintenance of National Stability (Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional, Bakorstanas) had played a prominent role in what often amounted to extra-legal land grabs (Lucas 1997). Such seizures conducted in the nation's capital in the 1970s were said to resemble 'military operations' (Abeyasekere 1987: 227). A human rights report recorded that when 'the local bureaucracy can't get agreement from landholders, they use intimidation, physical violence, threats of arrest, and, in the last resort, terror squads' (cited in Lucas 1997: 239).

Under Suharto, land was taken forcibly not only for dams, plantations and factories, but also—because of bureaucratic corruption—for tourism, golf courses, shopping malls and luxury housing estates (Lucas 1997). Normally, inadequate or below-market-value compensation was paid. In newly democratic Indonesia, in an attempt to improve its sullied image and avoid being accused of committing human rights abuses, the army has drastically reduced its public role, including as enforcer of the state's land acquisition desires.

But the 2005 decree of the democratically elected Yudhoyono did not rectify the democratic deficiencies of Suharto's edict. The composition of the local government land-purchasing committees, which had the key role in managing the land acquisition process, remained fully staffed by government officials (article 6). In other respects, the new decree was more severe than its predecessor. The New Order regulation had defined the public interest as 'the interests of all levels of society' (article 1(3)), from which for-profit private sector projects were excluded.[2] Yudhoyono's edict restricted 'public interest' to 'the interest of a majority of society' (article 1(5)).[3] This favoured for-profit private sector projects. For example, the number of types of infrastructure projects that were eligible for eminent domain increased from 14 to 21. In this way, the state had the power to appropriate privately held land for projects deemed in the public interest, as long as a process of deliberation (*musyarawah*) between land occupiers/owners and local government land committees had been pursued. Significantly, Suharto's 1993 version listed just two ways for

2 The original is: '*Kepentingan seluruh lapisan masyarakat*'.

3 The original is: '*Kepentingan sebagaian besar masyarakat*'.

landowners to release their rights over their land to the government in the public interest—by relinquishing (*pelepasan*) or transferring (*penyerahan*) them (article 2(2)). Yudhoyono's version added a third—nullifying (*pencabutan*) such rights at the president's discretion (articles 2(1b), 3(2) and 18(4)).[4]

Both decrees stipulated that *musyarawah*, especially regarding the level of compensation, must inform the process. But while Suharto's decree lacked time limits, Yudhoyono's capped negotiations between landowners and local government committees at 90 days. The procedures set out in the 2005 regulation also involved the courts more than the 1993 decree had done. If negotiations were not resolved within the specified time limit, a government committee could deposit its offer at a district court and thereby legally complete the transaction (article 10(2)). Claimants could challenge neither the decision to invoke eminent domain nor the level of compensation, although they could lodge an objection to the amount of compensation with the local government executive (district head or mayor), who would decide on the matter. Meanwhile, the money would remain at, or be consigned to, the district court for an indefinite period.[5]

This consignment procedure raised a number of concerns among land rights activists. First, it seemed to run roughshod over due process and the people's rights to land, which the 2005 decree recognised in its preamble and hence claimed to respect. Second, it misapplied the consignment procedure. Based on an earlier land law (Law 20/1961 on Revocation of Rights to Land and Objects on the Land), consignment was meant to be used only if the landowner could not be found, or if there were multiple claimants to the land in question, such as in communal rights cases of the type prevalent in the country's outer islands (Hutagalung 2005: 166–7). The Yudhoyono administration pointed to a similar consignment procedure in Malaysia to justify its approach, ignoring the awkward fact that Malaysia practises common law, while Indonesia's legal system is rooted in the civil law tradition. This is akin to wondering why the tasks and responsibilities of a president in a presidential system differ from those of a prime minister in a Westminster system. Nevertheless, officials cited how in Malaysia the government takes possession of the land in question during court proceedings in order to allow a project to start; the role of the court is only to decide on the final level of compensation. In all, it seemed as if Yudhoyono's government was trying to replace the coercion of the army with the equally undemocratic threat of legal action to get its way.

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4 This legal process is predicated on Law 20/1961, an important land law that is discussed further below.

5 This procedure is taken from the Dutch 'consignee' process (*konsinyasi* in Indonesian).

The promulgation of Presidential Decree 36/2005 met with vehement criticism. Activist organisations denounced it in the press and published critical reports. One illustrative headline read: 'New land regulation will inflict misery' (Down to Earth 2005). Demonstrations were held at the presidential palace in Jakarta and at government agencies in Semarang, Solo and Yogyakarta. Critics drew troubling parallels with the New Order, expressed their doubts about the neutrality of the courts, said they feared the seizure of people's lands by foreign investors and queried the meaning of the 'public interest' as set out in Yudhoyono's decree. Tollroads and other infrastructure projects, they charged, were about making money, and not automatically about serving the public interest.

Concern extended beyond activist circles. In a series of articles, the former deputy head of the National Land Agency (Badan Pertanahan Nasional, BPN) and a leading authority on land law, Professor Maria S.W. Sumardjono, charged that the decree violated several existing laws of higher standing. Because the land question ultimately was a human rights issue, she insisted, any regulation had to have parliamentary approval. In that way, a public debate could be generated, as was happening around the revision of the 1960 Basic Agrarian Law (Sumardjono 2005a, 2005b, 2005c). Of course, this was precisely what the Yudhoyono administration wanted to avoid.

While attempting to assuage the concerns of investors, Yudhoyono could no longer ignore the rising public anger. The outcry over his decree twice forced the postponement of a follow-up forum to the 2005 infrastructure summit. So, in mid-2006 he issued Presidential Decree 65/2006 amending his 2005 version. An attempt at compromise, this brief edict slashed the number of types of public interest projects to seven. Tollways remained, as did the restrictive definition of the public interest. The number of days allowed for deliberation was increased to 120, but the limited recourse to appeal was left unchanged. Unaltered too was the composition of the land acquisition committees; they remained staffed by local government officials, thus compromising any independence or neutrality as assessors or mediators (Human Rights Watch 2006: 40). The president's administration did, however, expunge all references to the nullification of land rights at the president's discretion. In all, the manoeuvre to promulgate the 2006 decree was politically expedient. While the new decree did not resolve the government's difficulty in acquiring land, it did not cause the outcry that its 2005 counterpart had done.

OBSTACLES TO EFFICIENT LAND ACQUISITION

Unlike Suharto's decree, Yudhoyono's decrees failed to become blunt instruments of state power to appropriate land in the public interest, as

some in his administration, such as Vice-President Jusuf Kalla, and investors had hoped. Yudhoyono refused to resort to the presidential power of expropriation (*pencabutan*) of people's land rights that his 2005 decree (and Law 20/1961) permitted.[6] Publicly, officials couched the president's unwillingness in administrative terms, noting the logistical impracticality of a sitting president signing the thousands of revocation letters personally (Winoto 2011: 21). Privately, Yudhoyono's hesitancy was more political, in that he, as a democratically elected president, did not want to be seen revoking such rights with the stroke of a pen. To do so would be considered too drastic, too suggestive of the authoritarian practices of yesteryear.

With the central government wary of deploying its powers of compulsion, it was left with little recourse but to assemble land in the public interest through the voluntary surrender of people's land rights. In Indonesian land law, the release (*pelepasan*) or surrender (*penyerahan*) of one's rights is considered voluntary if it results from deliberation and the resulting compensation is deemed fair by both parties. Under Suharto, compensation was anything but fair. That is why in Indonesia compensation has been known by the popular phrase *ganti rugi* or, literally, 'replacement for damages'. If deliberation reached an impasse, Yudhoyono's 2005 decree detailed a consignment procedure (left unchanged by the 2006 amendments) whereby the state deposits the money with a district court. The court determines the final price, and the state can consider the rights to the land to be nullified.

The dramatic changes to the broader institutional and political context were another obstacle. For the majority of Yudhoyono's time in office, although he had legal domain over the nullification of land rights, local government officials, under the country's 1999 decentralisation laws, were in charge of enforcing the state's policy on the ground. This had significant implications for the speed—or lack thereof—of land acquisition in the public interest. In particular, as we will see below, an egregious mismatch of incentive structures between central and local officials emerged. A perverse logic beset this relationship and the process of compulsory land acquisition.

In post-Suharto Indonesia, law-makers had enacted two statutes in 1999 to rectify the excessive centralism of the New Order. These sought to considerably alter central–local government relations. Both took effect in January 2001. One law (Law 25/1999 on the Fiscal Balance between the Central Government and the Regions) rebalanced fiscal relations;

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6 This authority was made explicit in the 2005 decree but excised from the 2006 version. Still, the 1961 law, upon which this power rested, remained in effect at the time and thus the power was legal.

the other (Law 22/1999 on Regional Government) devolved a range of administrative and political powers, including responsibility for land matters, to the districts and cities. Law 25/1999 gave regional governments the power to generate local tax revenue through land management, including the issuance of land and building permits (articles 7–8). Under this law, many BPN staffers were redesignated as local civil servants (Thorburn 2004).

Contrary to the spirit and letter of the regional autonomy laws, the central government almost immediately began to undermine the authority of local administrations over land. It delayed the promulgation of implementing regulations and, in the case of land matters, then passed subordinate regulations bolstering BPN's authority at the expense of local governments' authority. For example, in 2001 President Abdurrahman Wahid signed a presidential decree (number 10/2001) stating that prior land-related legislation would remain in effect until all the implementing regulations on land as a result of the regional autonomy laws had been completed (Reerink 2011: 74–9). Recentralisation through this kind of soft law (that is, through regulations that were hierarchically below parliamentary statutes) continued, including a 2006 presidential regulation signed by Yudhoyono (number 10/2006) giving a number of land administration and registration functions to BPN.

Structurally, however, the core of the problem was the following. On the one hand, central officials remained in charge of the contracting of national projects, including tollways, and thus had incentives to have land deals concluded expeditiously so that construction could commence as quickly as possible. Some of the incentives could be defined as belonging to the 'public good' kind, including an argument for the general benefits of expressways, such as lower transport costs, and thus lower manufacturing costs, more jobs, higher economic growth and so forth. Other incentives were more political—stemming, for example, from Yudhoyono's desire to bolster his prestige and leave a legacy (Tampubolon 2012). This ratcheted up pressure on Public Works and other ministries to produce tangible and verifiable outputs. The Ministry of Public Works could share in the president's glory if successful, and its high-ranking bureaucrats could receive handsome bonuses for project completion. Upon retirement, they might also avail themselves of choice consultancy positions with private firms. There was also illicit gain to be had amidst the auction of project licences.

On the other hand, such central government projects were located in jurisdictions where practical implementation was largely controlled by local officials whose incentive structures differed appreciably. They had little to gain in the way of prestige and they did not receive performance bonuses for completing these projects. Underpaid and overworked, local

officials were tasked with the thankless job of dealing directly with angry citizens who were being forced to move.

With the mismatch of incentives between national and local officials, from where did the latter obtain their rent? Although difficult to document, apparently the answer lay in the purchasing of land parcels (mostly through proxies) that would later be required for such projects as the Trans-Java Expressway. The years-long delays in these projects gave local bureaucrats (and local politicians) ample opportunity to acquire and act on foreknowledge of a route's details. The formal issuance of a location permit by the governor's office (as required by Presidential Decree 36/2005, article 4) was a key mechanism in this process. From the head of BPN and Indonesia's trade minister to local bureaucrats, all have admitted that these rent-seeking purchases were a public secret.

Indeed, local officials sometimes used drawn-out negotiations with project-affected landowners to extract rent from the central government (and also from investors). Typically, the longer the negotiations dragged on, the more the price of the land would increase. Prioritising a short-term rent-seeking approach, local officials considered that a road would be built eventually, bringing with it tangible benefits for their area. But a delay of a few months or a year would not affect their private-interest strategies. They were determined to get their cut (Davidson 2015).

Local officials generally considered the meandering pace of land taking to be the central government's problem, not theirs. National officials were after all statutorily (and financially) in charge of these projects; their condescending attitudes and actions towards their local counterparts only confirmed the suppositions of the latter.[7]

Two further obstacles to efficient land acquisition stemmed from the broader political environment. First, post-Suharto, relatively poor landowning citizens were no longer easy to ignore. As mentioned above, eminent domain powers under Suharto rested fundamentally not on state law but on state power. But in the post-Suharto era, the costs of non-compliance by citizens decreased as overt coercion lessened. New amendments to the country's constitution guaranteed a range of rights, including adequate housing, although Yudhoyono's decrees failed to provide for this. The public was more suspicious than ever that private interests lurked behind the public interest rhetoric of the government on PPP infrastructure development, and people distrusted the notoriously corrupt BPN (O'Rourke and Milne 2010: 132; Jakarta Post 2011). So it was

7 Illustratively, Vice-President Kalla had a penchant for berating local officials publicly for foot dragging on land acquisition. For one example, see Kompas 2006).

no surprise that some landowners were unwilling to sell their properties easily for what Yudhoyono called 'the good of the nation' (Kompas 2008).

Second, licence-holders to projects were hesitant to provide land appropriation monies because of their own financial uncertainties. In some cases this forced local officials to suspend the purchasing process. To ameliorate investor concerns, the government allocated special funds through a designated public service agency (*badan layanan umum*, BLU) to assist with compensation payments. However, a procedural loophole in the allocation of monies—the concessionaire had to apply for the funds to be used—allowed reluctant concessionaires to abstain from committing to their projects financially.

For example, in the case of the Trans-Java Expressway megaproject, uncertainties over the ownership of licences on critical sections on Java's north coast—the long Cikampek–Palimanan turnpike (116 kilometres) and the three segments (168 kilometres cumulatively) between Cirebon and Semarang—were paramount in causing investor hesitancy to pay for land acquisition. The 2006 sale of 55 per cent of the Cikampek–Palimanan franchise to a Malaysian entity, PLUS Expressways, stirred a nest of controversy. It took more than three years for the legal questions raised by the sale to be resolved and for the Malaysian investors to feel secure enough in their investment to pay for the land.

Landowners along the three Cirebon-to-Semarang routes faced more serious uncertainties regarding the fate of their land. In 2007, financially distressed investors sold their concessions to a subsidiary of Aburizal Bakrie's conglomerate. By design the sale was meant to obfuscate ownership of the licences. Bakrie's tollroad unit, PT Bakrie Toll Road, would manage the three routes until they were operational, at which point Bakrie's company could exercise an option to buy the licences in full at a later, unspecified point in time. Until then, who was really in charge, and who would request the BLU funds, was anybody's guess.

In fact, the request never materialised. In late 2012, Bakrie sold his tollroad interests to a subsidiary of media tycoon Hary Tanoesoedibjo's PT Media Nusantara Citra Group, which then, in mid-2014, resold the licences to the state-owned construction firm PT Waskita Karya. Meanwhile, the percentages of required land that had been acquired by the time of Bakrie's sale to Tanoesoedibjo were low: the share stood at 29 per cent on one section of the tollroad (Pejagan–Pemalang), 2 per cent on another (Pemalang–Batang) and less than 4 per cent on the last (Batang–Semarang). Even the most insufferable central government official would not dare apportion the blame for this deplorable situation to local official obduracy. In other words, when accounting for Indonesia's slow eminent-domain process, the problem of investor intransigence has been equal to that of foot dragging by local officials.

STATUTORY AND INSTITUTIONAL RECENTRALISATION

Buoyed by his re-election in 2009, Yudhoyono used his political capital to embark on a statutory-based reform strategy to address the problem of sluggish land acquisition for infrastructure. This would mark the first time since 1961 that a statute on such a matter would be passed. On account of the new law (Law 2/2012 on Land Acquisition for Development in the Public Interest), activists (rightly) charged Yudhoyono's administration with trying to isolate the problem of eminent domain from the larger rubric of land reform. Yudhoyono also had to face the issue of slow legislative drafting in Indonesia. It was little surprise that the original target date for the enactment of the new law (early 2010) was missed by two years. The drafting process was complicated by the many ministries with competing interests that wanted input. A further sticking point concerned the two competing forms of governance reform being championed in Indonesia: the policy to establish a centralised, one-stop business licensing centre to facilitate investment, versus the laws enacting decentralisation of political authority. The conflict resulted in intense talks over which government agency would assume responsibility for compulsory land acquisition. If local governments continued as the executors, it was feared, the litany of problems might persist.

In the end, Law 2/2012 was a product of compromise between the government and the special parliamentary committee (*panitia khusus*, *pansus*) charged with considering the bill. The latter tried to bolster the rights and protection of citizens, while the former sought to bolster its own discretionary powers. For example, for *pansus* members, the omission of a definition of the public interest in the government's draft bill was egregious. A difficult debate between the parliamentary committee members and the government drafters of the law ensued. In the end, the definition read: 'The public interest is the interests of the nation, the state and the society that must be realised by government and be utilised to the greatest extent possible for the prosperity of the people' (article 1(6)).[8] This version was appreciably longer than its predecessors, but the phrase 'to the greatest extent possible' more closely resembled the 2005 decree's definition, 'in the interests of the majority of society', than it did that of Suharto's more inclusive 1993 version, 'in the interests of all levels of society'.

The power of the state to override citizens' rights was circumscribed in one meaningful way: the *pansus* succeeded in having the power of

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8 The original reads: '*Kepentingan Umum adalah kepentingan bangsa, Negara, dan masyarakat yang harus diwujudkan oleh pemerintah dan digunakan sebesar-besarnya untuk kemakmuran rakyat*'.

presidential prerogative to abrogate a citizen's private rights to land removed. Public consultation stipulations, meanwhile, were strengthened. An academic was added to the previously all-government team assigned to investigate objections to sites, in order to help balance the committee (article 21(3)). Furthermore, the duration of a location permit's validity was shortened from four years to three (two years, with a one-year extension) (article 24).

The compensation process was also amended to better support citizens' interests. Land evaluators were now obligated to consider immaterial values, something missing from the government's draft and from past practice (article 33(f)). Immaterial value is a vast and potentially slippery notion, but the law's explanatory addendum defines it as 'non-physical damage that can be equated (*disetarakan*) with a monetary value, for example, damages due to the loss of business or work, moving costs, costs associated with changing professions, and with the loss of value of residual property'. This explanation moved land acquisition in the public interest in Indonesia closer, on paper at least, to international standards.

The *pansus* also succeeded in having the appeals process extended. Now a ruling from the Supreme Court, not a district court, would be considered final (article 38). Even with this lengthened process, the government believed that a framework ensuring compulsory land purchases within a maximum of 583 days would both satisfy investors' interests and safeguard citizens' rights. This assumed that at each stage of an appeal the court would deliver a verdict within the deadline. It was a leap of faith.

Ensuring that land rights would become null only upon the actual receipt of compensation (or with the court's decision in the case of the consignment process) was now explicit (article 5). This stipulation was supposed to prevent a repeat of what had transpired with the Ciawi–Sukabumi link in West Java owned by Bakrie Toll Road. In 2009, after agreements on land acquisition had been reached, payments to landowners were delayed, in some cases for months, causing people who had taken out loans to buy (or rent) new residences to incur significant debts (Kusmalawati 2011: 68–73). All told, legislators hoped that compensation for land acquisition in the public interest would not only be appropriate, but also be just (*adil*), as the law clearly stipulated (article 9(2)).

A final key change to the draft concerned institutional supervision—in effect, the appointment of BPN to oversee compulsory land acquisition. The agency was not named explicitly in the draft bill, however, as the *pansus* was not convinced that BPN was capable of handling the daunting workload. BPN was primarily designed for land registration, and the demand for land by many ministries was great. Accordingly, the body that would conduct land purchases in the public interest was changed

from 'a land matter-related institution' (*lembaga pertanahan*) to 'government' (*pemerintah*) (article 6). This allowed for the (future) possibility of establishing a new government body specifically to deal with land acquisition issues. In the meantime, the then BPN head, Joyo Winoto, said his agency was up to the task, although he did admit that the transition from local government land committees to BPN might be messy and lengthy (Media Indonesia 2011). Nevertheless, the new law clearly represented a recentralisation of national government powers in contradistinction to the country's previous regional autonomy governance thrust.

The first controversy to arise over the new statute concerned one of its final provisions. According to the government's draft bill, for land purchases already under way, prior regulations 'can' (*dapat*) be applied. Of course, this implied that they *did not have to be*, affording the government flexibility in each case. The *pansus* argued that this was unfair, that it would create uncertainty and lead to arbitrary government decision-making. So, the word 'can' (*dapat*) was eliminated from the clause in the law (article 8(a)). Instead, prior laws and regulations *had* to be applied.

The head of the Indonesian Toll-road Operators Association, Fatchur Rochman, said that he appreciated the law's many pro-PPP and pro-investor provisions and those that bolstered the government's eminent domain powers. He even welcomed such measures as the inclusion of immaterial values to improve the compensation process. Rochman was willing to trade a rise in land costs for certainty of acquisition. The clause specifying whether old or new regulations should apply troubled him, however. Because the many tollroad projects already under way would have to use the older, ineffective regulations, he (rightly) believed that further delays were likely (interview, Jakarta, 12 July 2012).

Several months after the promulgation of Law 2/2012, in August 2012, Yudhoyono signed the much anticipated Presidential Decree 71/2012, confirming BPN's role as executor of involuntary land acquisition in the public interest (article 1(16)). The decree also stipulated that Yudhoyono's 2005 and 2006 eminent domain decrees would apply to outstanding acquisition cases (article 123), leaving Rochman feeling exasperated. Meanwhile, the decree failed to clarify other important matters, including the percentage at which land acquisition on a specific turnpike would be considered sufficient in order to apply the consignment procedure. The decree also made little mention of provisions on sanctions for non-compliance.

The new law would have become irrelevant if a coalition of civil society organisations had had its way. A few months after the law's promulgation, these organisations submitted an appeal for judicial review by the Constitutional Court. They argued that the bill violated key parts of the 1960 Basic Agrarian Law and the clause in the constitution relating to

economic democracy (article 33(3)). More specifically, they claimed that article 9 of Law 2/2012 failed to clarify sufficiently what was meant by 'the interests of development' and 'the interests of society', and thus it was impossible to know how the two should be balanced.[9] In a February 2013 decision, the court rejected the plaintiffs' claims in their entirety, so dealing a blow to civil society and its efforts to achieve comprehensive land reform. The court reasoned that any further clarification of key terms, if needed, could be satisfied by lower-level government regulations.[10] To which a dejected plaintiff responded, if the central government never puts those regulations in place, then what (Hukumonline 2013)?

Subsequently, several presidential decrees on eminent domain have been published, although none that clarify the key terms to which the dejected plaintiff was referring. In fact, even business interests have expressed exasperation over the rapid succession of such decrees—two by Yudhoyono and one by Jokowi—and consequent technical changes to the law that are causing uncertainty, and that reflect poorly on government resolve and commitment (Sukaesih 2015). While Yudhoyono's second decree (number 40/2014) amended light technical matters, the changes in his third edict (number 99/2014) were more consequential. They sought to ameliorate investors' concerns about which set of eminent domain regulations would be applied, including the percentage at which land acquisition on a specific project would be considered adequate in order to apply the consignment procedure. Accordingly, the third edict stated that if land acquisition had reached 75 per cent by 31 December 2015, then the regulatory content of Yudhoyono's 2005 and 2006 decrees would apply; otherwise, Law 2/2012 and Yudhoyono's two subsequent edicts would take effect. This was intended to provide more legal certainty on the ground.

Jokowi's decree (number 30/2015) contains two meaningful changes. First, in the name of accelerated land acquisition, it allows private firms to pay compensation with their own money, with the payments to be reimbursed later by the relevant state agency. This, combined with another presidential decree on public–private partnerships (number 38/2015), might lead one to believe that Jokowi is betting on the private sector to help considerably in accelerating the provision of infrastructure in Indonesia. But laying the legal framework is one thing; actual reliance on the private sector to fulfil the president's aspirations on infrastructure—upon which much of the success of his presidency rests—is another. As was mentioned above, Jokowi is prioritising state-led investment; among

9 Constitutional Court Decision 50/PUU-X/2012, p. 28.

10 Constitutional Court Decision 50/PUU-X/2012, p. 144.

other things, he can exert control more assertively over state enterprises than over private sector partners.

The second change in Jokowi's 2015 decree allows gubernatorial location permits for the projects to be extended for a further two years if necessary. This was done in recognition of the delays that have beset most projects. The issuance of gubernatorial location permits plays a key role in Indonesian land governance and in part explains some of the process's sluggishness. For example, when a governor issues a permit, it is often accompanied by a freeze on the selling of affected property in order to extirpate the practice of speculative transactions. Yet this often means that the government also freezes its level of compensation at the market rate that applied at the time of the issuance of the permit. But because the sourcing of monies to pay the landowners can take years—as noted above, a loophole in the distribution of BLU funds means that licence-holders cannot be compelled to apply for their use—landowners are often offered compensation at rates that are several years out of date. In the meantime, land prices in Indonesia, and especially in crowded Java, continue to skyrocket.[11] So far, Jokowi's administration, like Yudhoyono's governments, has shown little willingness to set compensation at fair market rates, let alone at rates that would recognise that the land has more value to its inhabitants than it does for the government or for private investors.

The government should consider paying a premium for land if it desires increased efficiency. The trade-off between higher short-term project costs and longer-term efficiency gains in the form of faster project completion should be taken seriously. It might offer one of the few ways for Jokowi to realise his grand infrastructure ambitions.[12] Unfortunately, the drawn-out stand-off between officials and local residents over land compensation claims in Central Java for a long-delayed coal-fired power plant demonstrates that Jokowi's administration is still stubbornly unwilling to consider this option (Fiyanto 2015).

Before concluding, we must take note of two further matters. First are the troubling continuities in compulsory land acquisition between Yudhoyono's administrations and the first year of Jokowi's presidency. These include blanket statements by ministers that problems in acquiring land are the primary obstacle preventing the government from upgrading Indonesia's infrastructure expeditiously (Daniarto 2015); the exploitation of the judiciary as a threat to force landowners into accepting low compensation rates (Kompas 2015); the halting of the acquisition process

11 For a disturbing example, see Davidson (2015: 192–4).

12 For thoughts along these lines, including establishing a new special court for land acquisition, see Rosdaniah (2015: 169–70).

on the ground for months because of local government uncertainty over the application of relevant regulations (Virdhani 2015); and the continuation of a trusted, although misplaced, belief in the publication of highly technical ministerial decrees as a solution (Daud 2015).

Second are the reforms that Jokowi's government has *not* embarked upon, specifically meaningful reforms at BPN. As stated above, BPN is perceived as notoriously corrupt and incapable of handling the great volume of eminent domain cases; it is also among the least trusted state agencies in the eyes of ordinary Indonesians (Jakarta Post 2011). But Yudhoyono's land law bequeathed this specific institutional legacy to Jokowi by recentralising the state's powers of eminent domain and placing them squarely in BPN's hands. If Jokowi is to demonstrate tangible progress in his infrastructure agenda, he has neither the time nor adequate parliamentary support to amend the problem statutorily.[13] Nor is time on his side if he wishes to enact tangible reforms at BPN. With the 2019 elections looming, his progress will be constrained by the institutional legacies left behind by the two Yudhoyono administrations.

CONCLUSION

Most states possess the power of eminent domain. This truism makes the form of government—for example, whether it is authoritarian or democratic—matter less for the application of this power than state strength. The Indonesian state cannot penetrate its society as deeply as governments in the United States, China or Singapore have done, although certainly the availability of citizen recourse to challenge eminent domain powers legally and fairly varies across these examples. In Malaysia, the state consistently pays near-market rates for the land it acquires and, equally importantly, the level of public trust in the state agencies in charge of the process is significantly higher than in Indonesia (Omar and Ismail 2009). So far, Indonesia's bureaucracy has not shown the capacity or imagination to introduce hybrid schemes of collective ownership of projects that some Indian states have adopted in order to achieve greater efficiency in acquisitions for public interest projects such as expressways (Balakrishnan 2013).

A survey of involuntary land acquisition during Yudhoyono's and Jokowi's administrations brings to mind the felicitous phrase of 'changing continuities' that Schulte Nordholt (2003) used to describe the

13 This remains the case even with the September 2015 decision of the National Mandate Party (Partai Amanat Nasional, PAN) to join Jokowi's Red and White Coalition.

dynamics of transition from the New Order to the post-Suharto era. On the change side of the ledger, Jokowi has mobilised massive amounts of state resources to be invested in infrastructure provision. Meanwhile, the ratcheting up of the rivalry between China and Japan for regional supremacy, which has manifested in promises of soft loans, aid and investment worth billions of dollars to Indonesia, could benefit Jokowi's infrastructure drive enormously.[14] Regarding continuities, political economists might assert that it takes more than money to accelerate infrastructure provision, without the proper institutional framework in place. This is the takeaway lesson from the new institutional economics literature. It argues that private investment in infrastructure lags in developing countries because their institutional frameworks lack proper safeguards to adequately protect the property rights of investors (Levy and Spiller 1994). Jokowi does not currently possess the time or political clout to enact the widespread institutional reforms necessary for involuntary land acquisition, the other key part in accelerating infrastructure provision. Unless his government becomes more willing to pass the new financial windfalls of infrastructure development on to the people whose land happens to stand in the way of these projects, Jokowi's record on infrastructure might start to resemble that of his predecessor. Yudhoyono won re-election regardless. It remains to be seen if Jokowi, who is staking a good deal more of his presidency on progress in infrastructure investment than Yudhoyono did, is capable of replicating the feat.

REFERENCES

Abeyasekere, S. (1987) *Jakarta: A History*, Oxford University Press, Singapore.

Balakrishnan, S. (2013) 'Highway urbanization and land conflicts: the challenges to decentralization in India', *Pacific Affairs*, 86(4): 785–811.

Daniarto, R. (2015) 'Soal kendala lahan, BPN se-Indonesia wajib koordinasi' [BPN is responsible for Indonesia-wide coordination on land obstacles], *RadarPena.com*, 16 June.

Daud, A. (2015) 'BPN segera terbitkan petunjuk teknis pembebasan lahan' [BPN will soon publish technical instructions on compulsory land acquisition], *Katadata*, 22 April.

14 That said, in October 2015 Jokowi's government controversially concluded a deal with the Chinese government on a high-speed rail link between Jakarta and Bandung after cancelling a prior loan agreement with the Japanese government, thereby angering the latter and causing concern among other investors. This high-stakes competition could create additional headaches for Jakarta that may throttle, rather than support, Jokowi's ambitious infrastructure agenda (Kurniawati 2015).

Davidson, J.S. (2015) *Indonesia's Changing Political Economy: Governing the Roads*, Cambridge University Press, Cambridge.
Down to Earth (2005) 'New land regulation will inflict misery', *Down to Earth*, No. 66, August.
Fiyanto, A. (2015) 'Jokowi's misleading view of Batang plant', *Jakarta Post*, 4 September.
Hukumonline (2013) 'MK: UU Pengadaan Tanah konstitusional' [Constitutional Court: the Land Acquisition Law is constitutional], *hukumonline.com*, 13 February 2013.
Human Rights Watch (2006) 'Condemned communities: forced evictions in Jakarta', *Human Rights Watch*, 18(10C): 1–111.
Hutagalung, A.S. (2005) *Tebaran Pemikiran Seputar Masalah Hukum Tanah* [A Dispersion of Thoughts on the Land Law Dilemma], Lembaga Pemberdayaan Hukum Indonesia, Jakarta.
Jakarta Post (2011) 'Editorial: land control', *Jakarta Post*, 27 April.
Kompas (2006) 'Tol terkendala lahan' [The availability of land is obstructing toll-road development], *Kompas*, 20 February.
Kompas (2008) 'Presiden: spekulan tanah hambat pembangunan' [President: land speculation obstructs development], *Kompas*, 28 April 2008.
Kompas (2015) 'Ganti rugi lahan akan dititipkan' [Compensation for land will be consigned], *Kompas*, 13 August.
Kurniawati, D. (2015) 'Switch to China on Indonesian rail line angers Japanese', *Asia Sentinel*, 13 October.
Kusmalawati, D. (2011) 'Land acquisition as the predominant factor leading to the failure of Indonesian toll road public private partnership projects: the Ciawi–Sukabumi toll road project', MA thesis, University of Auckland, Auckland.
Lane, M. (2015) 'The politics of Widodo's prioritisation of accelerated infrastructure construction', *ISEAS Perspectives*, ISEAS-Yusof Ishak Institute, Singapore, 18 August.
Levy, B. and P.T. Spiller (1994) 'The institutional foundations of regulatory commitment', *Journal of Law, Economics and Organization*, 10(2): 201–46.
Lucas, A. (1997) 'Land disputes, the bureaucracy, and local resistance in Indonesia', in J. Schiller and B. Martin-Schiller (eds) *Imagining Indonesia: Cultural Politics and Political Culture*, Ohio University Press, Athens, OH: 229–60.
Media Indonesia (2011) 'Pengadaan tanah bisa lanjut tanpa RTRW baru' [Land acquisition can continue without new local zoning regulations], *Media Indonesia*, 19 December.
Omar, I. and M. Ismail (2009) 'Kotaka's model in land acquisition for infrastructure provision in Malaysia', *Journal of Financial Management of Property and Construction*, 14(3): 194–207.
O'Rourke, K. and P. Milne (2010) *Who's Who in Yudhoyono's Indonesia: The Players, Parties and Institutions, 2010–2015*, third edition, Reformasi Information Services and Castle Asia, Jakarta.
Reerink, G. (2011) *Tenure Security for Indonesia's Urban Poor: A Socio-legal Study on Land, Decentralization, and the Rule of Law in Bandung*, Leiden University Press, Leiden.
Rosdaniah, S.I. (2015) 'Nominal and actual objectives of economic policymaking in Indonesia', PhD thesis, Australian National University, Canberra.
Sambjiantoro, S. (2015) 'No more hot air on infrastructure: Jokowi', *Jakarta Post*, 30 April.

Schulte Nordholt, H. (2003) 'Renegotiating boundaries: access, agency and identity in post-Soeharto Indonesia', *Bijdragen tot de Taal-, land-, en Volkenkunde*, 159(4): 550–89.

Sukaesih, M. (2015) 'Mewujudkan jalan tol 1.000 km' [Making 1,000 km of tollroads a reality], *Investor Daily*, 13 May.

Sumardjono, M.S.W. (2005a) 'Perpres No 36/2005: langkah maju atau mundur?' [Presidential Decree 36/2005: a step forward or backward?] *Kompas*, 11 May.

Sumardjono, M.S.W. (2005b) 'Perekonomian: Perpres 36 bukan untuk sengsarakan rakyat' [Economically, Presidential Decree 36 will not impoverish the people], *Kompas*, 12 June.

Sumardjono, M.S.W. (2005c) 'Perpres No 36/2005, dampaknya bagi kepentingan umum' [Presidential Decree 36/2005: its impact on the public interest], *Kompas*, 16 June.

Tampubolon, H.D. (2012) 'The SSB and SBY's legacy', *Jakarta Post*, 25 July.

Thorburn, C. (2004) 'The plot thickens: land administration and policy in post-New Order Indonesia', *Asia Pacific Viewpoint*, 45(1): 33–49.

Virdhani, M.H. (2015) 'Pengadaan lahan empat tol di Depok terhenti' [Land acquisition for four tollroads in Depok is stalled], *Okezone.com*, 18 June 2015.

Winoto, J. (2011) 'Pengembangan dan pemantapan program-program strategis Badan Pertanahan Nasional RI untuk keadilan dan kesejahteraan [Development and consolidation of strategic programs of Indonesia's National Land Agency for justice and prosperity], in S. Sujadi (ed.) *Pergulatan Pemikiran dan Aneka Gagasan Seputar Hukum Tanah Nasional: Suatu Pendekatan Multidisipliner* [A Churning of Thoughts and a Range of Ideas on National Land Law: A Multi-disciplinary Approach], Fakultas Hukum Universitas Indonesia, Jakarta: 8–21.

8 Housing low- and middle-income households: land development and policy practice in two Indonesian cities

Delik Hudalah, Yunie Nurhayati Rahmat and Tommy Firman

To respond to the rapid increase in urbanisation across the country, Indonesia needs to develop an effective land policy that facilitates formal housing development and gives all sectors of the population access to good-quality, affordable housing. The share of the urban population reached 30 per cent in 1990, 42 per cent in 2000 and 49.8 per cent when the latest census was conducted in 2010. By 2035, it is expected to reach 66.6 per cent, and to exceed 80 per cent in four provinces in Java: Jakarta, West Java, Yogyakarta and Banten (Bappenas 2013a).

Indonesia's rapid urban growth has increased the numbers of low- and middle-income people residing in the cities and suburbs, but the availability of housing for those people has not kept up with demand. According to data released by the National Development Planning Agency, the housing backlog reached 12 million units in 2013 and is continuing to increase (Bappenas 2013b). Most houses built over the past decade have been built by owner-occupiers (rather than the government or private developers), but many of them are substandard. In 2012, 4 million Indonesians lived in very poor quality dwellings, some of which were not permanent structures, and another 13 million were homeless. While the number of houses constructed each year has increased, many of those dwellings remain unsold due to the high asking prices.

For the most part, owner-occupiers in Indonesia acquire their houses through informal, incremental processes, after squatting on the land, or using an inheritance or loan from a family member to purchase land. These arrangements have become a quick and ready solution to address

the housing backlog. However, informal processes are considered inefficient in providing low- and middle-income people with adequate access to urban amenities and infrastructure such as water, sewage, electricity or even the postal system (Monkonnen 2013: 257).

Meanwhile, economic growth has been pushing up land prices, squeezing low- and middle-income Indonesians out of the market. Unable to access well-located land, the poor are forced to squat on land that may be hazardous, without proper services and amenities, or located far from the city centre, without any assistance in terms of planning or provision of basic services, or even official recognition of their existence. Illegal occupation of land, in its various forms, often triggers land-use conflicts and makes it difficult for government to build infrastructure and facilities. Local governments need to face up to and overcome this emerging problem.

In this chapter we consider two related issues: the performance of Indonesia's land policies and institutions, and the key challenges for developing effective policies to facilitate formal housing development and improve the access to housing of low- and middle-income groups. To explore these issues, we investigate current institutional and policy issues affecting land and housing provision for low-income and middle-income groups. Accordingly, particular attention is given to the land registration and land acquisition processes, which can be considered critical elements of the urban land development process.

The chapter assesses the performance of Indonesia's land policies through two case studies: Semarang in Java and Manado in the outer islands. We selected these cities because they have experienced high rates of urban growth and expansion. Semarang is an example of a large city in Java, and Manado is situated in the relatively less developed eastern part of Indonesia.

The chapter is organised as follows. First, it reviews land development and policy issues in the Indonesian context. Then it provides overviews of the cities of Semarang and Manado. Finally, it analyses and compares land development practices, including land registration and land acquisition procedures, in the two cities.

We argue that the dominant role of the centralised National Land Agency (Badan Pertanahan Nasional, BPN) creates bottlenecks in urban land administration, to the detriment of lower-income people. Moreover, unclear property rights, inefficient bureaucratic procedures, high transaction costs, poor implementation and enforcement, and a lack of state resources remain key challenges in developing the forms of land policy required to facilitate housing development and enhance access to the housing stock. Consequently, low- and middle-income Indonesians face numerous obstacles in accessing housing with secure rights. At the same

time, this situation creates incentives for the construction of informal settlements, reduces the incentives for private developers to build houses for lower-income people and reduces the latter's access to urban infrastructure and amenities. The chapter concludes by considering some remedies for these issues.

LAND DEVELOPMENT AND POLICY ISSUES

Dualism in land policy

Indonesia has long been known for its dynamic informal housing sector, characterised by the self-provisioning of housing by owners through incremental processes, where the house is built over time, sometimes over decades (De Soto 1986; Struyk, Hoffman and Katsura 1990; Leaf 1993). Monkkonen (2013: 259) notes that, in almost all Indonesian cities, more than half the houses acquired between 2002 and 2007 were self-built, and a large share were acquired through other means, such as inheritance or gifts. Only a small share was new housing purchased from a developer or builder. The dynamism of the informal sector has its origins in the colonial period (1602–1942). During this time the Dutch administration did not extend its land registration system across the entire country, but limited it to the areas where it had economic interests (Leaf 1993; Monkkonen 2013). This allowed traditional or customary (*adat*) systems of land ownership to survive in areas where land was not registered to individuals. Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) recognises a customary right (*hak adat*) to land, together with a freehold right (*hak milik*), a cultivation right (*hak guna usaha*, HGU), a right to construct or use buildings (*hak guna bangunan*, HGB) and a use right (*hak pakai*) (World Bank 2012: 33). However, the regulations governing the transfer of *adat* land remain unclear (Soedarjanto 2007). This is probably one reason for the particular vibrancy of the informal housing sector in Indonesia (De Soto 1986; Struyk, Hoffman and Katsura 1990: Monkkonen 2013).

The promulgation of the Basic Agrarian Law in 1960 did not overcome the administrative dualism between land that had been registered under the provisions of that law and land that was was subject to customary regulation (see Chapter 3 by Bedner). The main problem with the law, as with many other regulations in Indonesia, has been a lack of enforcement. For example, according to Supriyanto (2010), the government has not dealt effectively with the issue of land that has been 'neglected' or 'abandoned' by its owners, because of a failure to enforce the conditions governing title to such land. According to the elucidation to article 27 of

the Basic Agrarian Law, 'Land is neglected when it is deliberately not used in line with its condition or with the nature and purpose of the right on it'. Article 6 of the Basic Agrarian Law states that land rights embody a social function, and article 15 that the person or legal entity that owns the land has an obligation to preserve it, maintain its fertility, prevent damage to the land and take into consideration the interests of the economically weak. The sanctions for neglecting land by violating the provisions of article 15 are a maximum term of imprisonment of three months and/or a maximum fine of Rp 10,000 (article 52).

Government Regulation 11/2010 on the Control and Utilisation of Neglected Land also contains specific provisions on the definition and treatment of land that is not being used for its intended purpose. Nevertheless, large areas of such land are found across Indonesia. BPN estimates that Indonesia has at least 7.3 million hectares of neglected land, not including areas of less than 5 hectares owned by individuals (cited in Nurlinda 2014). Much of this land would have been acquired by individuals and particularly developers for speculative purposes—without any intention of adhering to the purpose set out in the original land title. With less land available for housing, land prices have risen sharply and the affordability of low-cost housing in urban areas has fallen (Koppel 1993).

Responding to the growing complexity of land law in Indonesia, Presidential Decree 34/2003 on National Land Policy recommended revising the 1960 Basic Agrarian Law to provide a more adaptive national land system, and accelerating the drafting of a new law on land rights and other land-related legislation. It recommended developing national land-information and land-management systems that would cover land inventories, land registration, cadastral mapping, and land use; and that made a clear distinction between the land-related tasks of the national government and those of the provincial and district/municipal (*kabupaten/kota*) levels of government. It also gave BPN a more strategic role in developing and managing national land policy, thus elevating its importance after a long period during which its structure was constantly changing: it was placed in the Ministry of Home Affairs in 1964, scaled down to a directorate-general within that ministry in 1965, transformed into an independent organisation in 1988, placed under the Ministry of Agrarian Affairs in 1993, moved back into the Ministry of Home Affairs in 1999 and became a non-departmental government institution (*lembaga pemerintah non-departemen*, LPND) in 2002. Presidential Regulation 10/2006 gave BPN direct responsibility for land management and administration and made it directly responsible to the president, and Presidential Decree 63/2013 set out the precise roles and functions of BPN. In addition to the Basic Agrarian Law, the legal framework for land policy and land markets is governed by a set of (in order of authority)

government regulations; presidential decrees; regulations of the minister of home affairs; regulations of the minister of agrarian affairs and spatial planning and the head of BPN; decrees of the minister of agrarian affairs and spatial planning and the head of BPN; and instructions of the minister of agrarian affairs and spatial planning.

Land institutions in transition

At the beginning of the decentralisation era in Indonesia, there was disagreement among policy-makers, politicians, scholars and non-government organisations about whether or not land administration should be decentralised. Law 22/1999 on Regional Government mandated that the authority for land administration should be transferred to the provincial and district/municipal levels of governments, but that decision was reversed in 2001. There were several reasons for the recentralisation of land administration. First, two years of decentralisation had revealed that the institutional capacity of local governments to carry out land administration was relatively low (Rieger et al. 2001). Second, BPN officials at both the central and local levels had discovered that local governments were issuing a variety of different types of land title certificates that were not consistent or transferable across regions. In addition, BPN officials argued that land was an important foundation for national unity and cohesion, so the institutional arrangements for land administration needed to be unified.

BPN formulates and carries out national land policy and is directly responsible to the president through the minister of agrarian affairs and spatial planning. Its main tasks are to formulate and coordinate land policies, plans and programs and to guide, monitor and control land administration. According to Presidential Regulation 10/2006 and Regulation 4/2006 of the Head of the National Land Agency, BPN is one of only a few centralised institutions in Indonesia that do not have to coordinate their activities with those of local governments. All regulations on land are uniform across all parts of the country. Only the central government can make land-related regulations and policies, and lower levels of government are required to follow these.

The branch offices of BPN across the country are charged with delivering land-related services, under the direction of the head office in Jakarta. According to Presidential Decree 63/2013, the division of tasks between BPN offices at the different levels of government is as follows.

- The head office is responsible for formulating national policy and guiding land administration and management at the provincial and local levels.

- The regional offices of BPN (*kantor wilayah*) are responsible for guiding, monitoring and evaluating land administration and coordination at the provincial level.
- The district/municipal offices of BPN (*kantor pertanahan*) are responsible for providing land-related services directly to the community.

Land development plans and permits

Land management, principally the process of developing, managing and controlling land development plans and permits, continues to be a dynamic process in Indonesia, particularly since the enactment of Law 26/2007 on Spatial Planning (the Spatial Planning Law) and its related regulations. During the 1980s, spatial planning and the procedures for issuing land development permits were top-down processes that tended to reserve land for a few approved developers, resulting in the speculative trading of land (Winarso and Firman 2002). This system allowed developers to purchase land—often prime agricultural land—from the owners at very low prices, and sell it at much higher prices for housing. High land prices and strong demand for housing made it difficult for low- and middle-income groups to access the housing market during this time. The 2007 Spatial Planning Law decentralised land development and permit issuance to local governments, creating a more participatory and equitable environment for the development and implementation of urban spatial plans (Hudalah and Woltjer 2007). Nevertheless, land speculation is still happening. Soemarno (2002) argues that it is not the land development permit system per se that is causing the problems, but rather the poor management of urban development, as well as incompleteness of the law and inconsistencies in the implementation of spatial plans and laws.

The management of land affairs faces several obstacles. First, local governments lack the capacity to effectively manage and implement land-use plans and development permits. The national, provincial and district/municipal governments are all required to have spatial plans saying how the land should be used. However, in many cases, such as in the Bogor–Puncak–Cianjur (Bopunjur) area in Greater Jakarta, local governments have demonstrated that they lack the capacity to administer those plans, and in particular to implement development in a controlled manner (Firman 2004).

Second, law enforcement continues to be a major problem in the land development and spatial planning system. Land development permits should refer to the land-use plans stipulated in the national, provincial and district/municipal spatial plans, and in related documents such as zoning regulations and detailed spatial plans (*rencana detil tata ruang*,

RDTR) at the site level. However, many of the permits that are issued are not in accordance with the relevant land-use plans and regulations, leading to disorderly spatial planning and developments that have serious environmental impacts. Monkkonen (2013: 257) argues that it is often not an inability to enforce the law that leads to ineffective land use, but rather the selective or flexible enforcement of the law by local officials, who use the threat of regulation as a means to extract resources from land development participants—a form of rent seeking. In the 1990s, some local governments set targets for the fees paid by developers for their permits (Firman 1997). Even today, those paying land registration fees and development permit charges are expected to pay an additional unregulated 'thank you' fee, with the amount varying across regions.

One of the most fundamental changes in the 2007 Spatial Planning Law concerns the attempt to achieve orderly spatial planning and controlled development through four means: zoning regulations, permits, incentives and disincentives, and sanctions. The Spatial Planning Law and related legislation includes administrative and criminal sanctions for developers and other individuals who violate the law, namely prison sentences of 1–15 years and fines of up to Rp 5 billion. In addition to imprisonment and fines, government officials who are found to have acted corruptly in the issuance of licences can be dismissed from their positions. It was expected that these heavy sanctions would provide an effective deterrent, facilitating implementation of the law. However, in the face of very weak and inconsistent enforcement of the law, violations of spatial plans are still occurring (Hudalah, Winarso and Woltjer 2016).

Third, in contrast to the previous law on spatial planning (Law 24/1992), which accommodated public participation in terms of general principles only, Law 27/2007 on Spatial Planning highlights public participation and transparency (Hudalah and Woltjer 2007). It provides for public participation throughout the entire development process, from planning through to implementation and control. In practice, however, public participation is often considered a mere technical or political formality, achieved by holding a few public meetings. Owing to the inequality of public access to these participatory forums, it is doubtful that community views are adequately represented, or that officials develop a sense of accountability to the public.

AN OVERVIEW OF THE CITY OF SEMARANG

Semarang is the capital of Central Java province. It is located on the north coast of the island of Java and is about an hour's drive from Yogyakarta by car. It has an area of 225.2 square kilometres and a population of 1.5

million people. It originally consisted of nine subdistricts (*kecamatan*) but its boundaries were extended outward in 1976, and it now has a total of 16 subdistricts. The northern part of the city is built on a coastal plain. Anticipating seasonal floods, the Dutch colonial government built two aqueducts. Climate change has added to the problem of flooding, with Semarang experiencing sea-level rises of about 5–10 millimetres annually.

Geographic and economic ties connect Semarang with several neighbouring districts and municipalities, which together form the larger metropolitan region known as Kedungsepur (based on the initial letters of those areas, namely Kendal, Demak, Ungaran, Salatiga, Semarang and Purwodadi). As a metropolitan core, Semarang faces urban problems such as poverty, slum areas and infrastructure deficiency.

Low- and middle-income residents find it difficult to obtain safe and secure land for housing in the inner city of Semarang. Our field survey in 2011 indicated that land in the inner city (the original nine subdistricts) was relatively expensive, at about Rp 1–5 million ($80–400) per square metre. Nevertheless, land prices in inner northern subdistricts such as North Semarang, East Semarang and Tugu had fallen because of their vulnerability to sea-induced flooding caused by climate change. In the outer subdistricts, we found that land prices were lower, at about Rp 400,000–500,000 ($32–40) per square metre for developed land and Rp 15,000–100,000 ($1.2–8) per square metre for undeveloped land.

In 2011, Semarang had about 70,000 parcels of land available for housing, about 50,000 (more than 70 per cent) of which were registered with BPN. A parcel of land means any area of land in the city under the ownership or legal control of a single person or entity. A building right (HGB) was attached to most of the parcels of land being used for commercial activities, and a freehold title (*hak milik*) was attached to most of the houses occupied by individuals. The remaining parcels, especially those occupied by low-income people, were not registered with BPN. Low-income people generally could not afford to buy land situated in well-planned, well-developed areas. Therefore, some squatted in riverside areas with only a use right (*hak pakai*) attached to the land, while many others lived in *kampung* such as Bandarharjo (North Semarang), Pendrikan Kidul (Central Semarang) and Sawah Besar (Gayamsari), areas known for their unhealthy environments, lack of basic infrastructure and insecurity of tenure. In an attempt to improve living conditions and tenure security in these areas, the government had built public housing (*rumah susun*) close to several of these *kampung*.

Another option for low- and middle-income people was to live in the suburbs. To capture this demand, several private developers focused on building small houses for low-income people in the suburbs. For example, developers each built around 40 houses on plots of 3–4 hectares in

Dinas Mas, Dinar Elok and Dinar Asri in the subdistrict of Tembalang, and another developer built about 80 houses on a 10-hectare plot in Bukit Kencana in the subdistrict of Meteseh. Despite being relatively affordable, these new residential projects were located far from the city centre and suffered from poor accessibility.

AN OVERVIEW OF THE CITY OF MANADO

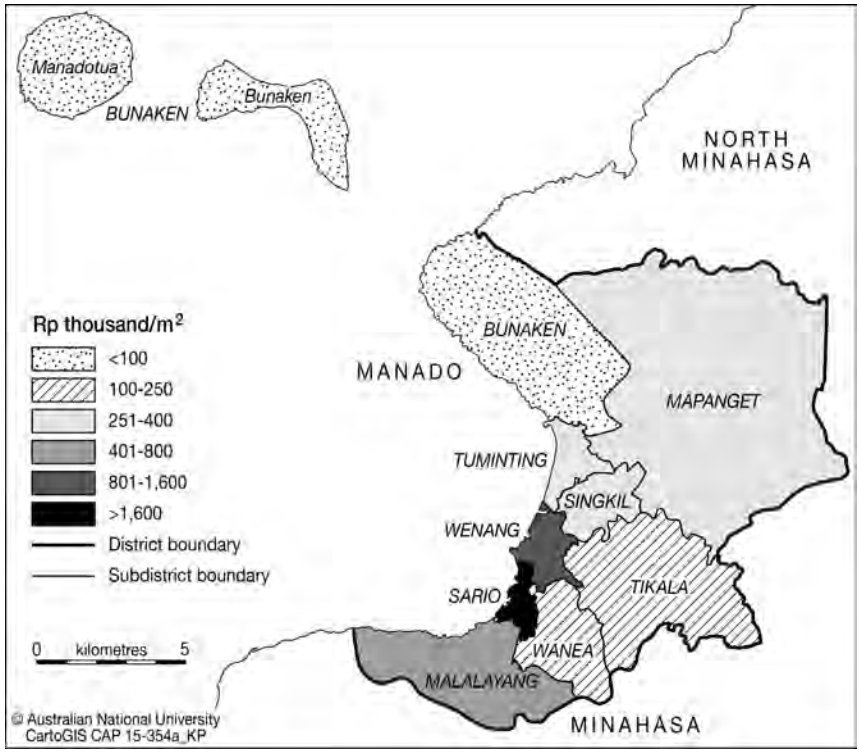
Located on the north coast of the island of Sulawesi, Manado is the capital of North Sulawesi province. It has an area of 157.3 square kilometres and a population of 405,715. The municipality consists of nine subdistricts. Key land issues in Manado include conflicts over land ownership and spiralling land prices.

The old centre of Manado can be found in Sario and Wenang subdistricts. They are situated on the city's main coastal zone and are considered vulnerable to rising sea levels. In the early 2010s, the government embarked on a massive land reclamation project in these subdistricts. According to the municipal government's land-use plan, the newly reclaimed coastal zone will become the city's new business area. Consequently, it has been the fastest-growing urban area, and has experienced the highest increases in land prices. In 2011, land prices in the centre of the city and in the coastal zone ranged from Rp 1.5 to Rp 3.5 million ($120–280) per square metre, compared with just Rp 500,000 ($40) per square metre for developed land and Rp 30,000–50,000 ($2.4–4) for undeveloped land in the suburbs. An overview of land values in Manado in 2011 can be seen in Figure 8.1.

Manado offers several types of land title, including a freehold right (*hak milik*), a building right (HGB) and a use right (*hak pakai*). A freehold right is attached to land intended for housing, and a building right is generally attached to land used for commercial uses. According to the local office of BPN, in 2011 Manado had 63,895 parcels of registered land, of which 52,855 parcels (covering 6,634 hectares) had a freehold title (*hak milik*). Customary land ownership is still recognised in Manado, with government plans to transform customary titles to *hak milik* status.

We found that low-income people generally inhabited new housing developments located outside the city centre, where land prices were relatively low. Developers had built some housing estates for low- and middle-income people in, for example, Mapanget subdistrict (Mapanget Griya Indah, Griya Paniki), Malalayang subdistrict (Griya Sea Lestari) and Boulevard Manado (Manado Griya Indah Estate). These suburban residential areas suffered from poor accessibility to public facilities and amenities and were located far from the city centre. Other low- and middle-income people lived in urban slums in the inner city, as in Semarang.

Figure 8.1 Land values in Manado by subdistrict, 2011



Source: Local BPN office, Manado.

Apart from high land prices, we found that disputes over land ownership were a major problem for land administration in Manado. The local BPN office recorded 55 disputes from 2009 to 2010, of which 43 had been resolved by 2011. Most were related to inheritance or to unclear information about land ownership, resulting in different parties claiming ownership of the same parcels of land.

LAND DEVELOPMENT PRACTICES IN SEMARANG AND MANADO

Land registration

In the early 2010s, the local BPN office in Semarang processed more than 10,000 land-related applications a month, including requests to split tenure, correct data, transfer tenure and register land. It rejected less than

1 per cent of these applications, usually on the grounds of unclear physical or legal data (including unclear data on physical borders), missing evidence of transactions or the presence of more than one claim to ownership of the same parcel of land.

According to the Semarang BPN office, applicants needed to follow several steps to register a parcel of land. First, they had to submit an application complete with proof of identity, proof of ownership of the land, a declaration stating that the land was not in dispute (*surat keterangan tidak sengketa*) and proof of payment of land and building tax (*pajak bumi dan bangunan*, PBB), accompanied by payment of the relevant fee as set out in Government Regulation 13/2010 on the Types and Tariffs of Non-taxable State Revenues at the National Land Agency, and Regulation 1/2010 of the Head of the National Land Agency. Applicants who were unable to provide proof of ownership of a parcel of land could submit a letter stating that he or she had occupied the land for at least 20 years. This document, known as a letter of land clarification (*surat keterangan tanah*, SKT), had to be authorised by the head of the *kelurahan* (the administrative unit below the *kecamatan*) in which the land was situated. The procedure would be similar in Manado.

In this respect, the *kelurahan* played an important role in clarifying land ownership. In the case of individual applicants, the process of obtaining an SKT from the *kelurahan* office generally did not take long. For developers, however, it could take about one month for the *kelurahan* office to verify the information provided and provide proof of occupancy, especially if there was an indication of conflict of ownership. The process normally involved the payment of unofficial fees of varying amounts that were not set out in the regulations. The local BPN office in Semarang claimed that the unofficial fee of Rp 100,000–500,000 it charged developers was used for public building renovation and maintenance. The *kelurahan* office in Manado charged a much lower fee of Rp 5,000–10,000, which it claimed was used to cover administrative costs.

The local BPN office in Semarang claimed that, overall, its procedures were in line with Government Regulation 13/2010 and Regulation 1/2010 of the Head of the National Land Agency. Nevertheless, in practice, we found that its fees were higher, and its processing times longer, than those stated in the regulations. The office defended its fees on the grounds that the regulations did not allow for inflation or for the need to deal with the city's hilly terrain and remote locations. Table 8.1 compares the time and cost of land registration (for individuals and developers combined) in the two cities in 2011.

The unwieldy nature of the regulations and the lack of transparency about the land registration process proved to be the greatest concerns of both households and developers. Concern about the complexity of the

Table 8.1 Time and cost of land registration in Semarang and Manado by procedure, 2011

Procedure	Time required		Cost	
	Semarang	Manado	Semarang	Manado
Document submission	1 day	1 day	Rp 100,000–500,000	Rp 5,000–10,000
Land measurement & surveying	1 day (or longer for larger areas)	1 day (plus queuing)	Rp 350,000 (or more, depending on area size)	Rp 350,000 (or more, depending on area size)
Mapping	Uncertain	Uncertain	Uncertain	Uncertain
Examination phase: processing & confirmation of data (physical & juridical)	Uncertain	Uncertain	Uncertain	Uncertain
Issuance of certificate	1 month	1 month	Rp 50,000 + transaction taxes	Rp 50,000 + transaction taxes
Total	**6–12 months**	**3–12 months**	**Rp 1 million or more**	**Rp 1–7 million**

Source: Authors' field survey, 2011.

multi-layered bureaucratic procedures and uncertainty about the timeline for issuing permits were exacerbated by the imposition of extra-legal fees. The most complicated procedure, and the highest unofficial fees, applied to the examination phase. After recording its land measurement and surveying results on its map and entering them in its database, the local BPN office would examine the physical and legal evidence of tenure. This might take several months, depending on the area of the land and the quality of the available data. Applicants who wanted to obtain a certificate as quickly as possible were charged the highest fees. Our interviewees consistently reported that the actual fees paid were higher than those set out in Government Regulation 13/2010.

Once the local BPN office had approved an application, applicants would have to pay land and building transfer tax (*bea perolehan hak atas tanah dan bangunan*, BPHTB). The amount of the tax was 5 per cent of the sale price if the land parcel was sold for less than Rp 20 million and 10 per cent if it was more than Rp 20 million. A certificate of title was usually issued soon after this, although unofficial fees might still be involved.

Regulation 1/2010 of the Head of the National Land Agency states that the entire land registration procedure should be completed within 38–97 days. In practice, however, we found that it normally took 6–12 months. The costs of registration were also far higher than those set out in the regulations. For example, a resident in the subdistrict of Meteseh, Semarang, told us that he might pay a total registration fee of about Rp 8 million to register a parcel of land, compared with the official fee of only Rp 120,000. A developer of housing for low- and middle-income households said that the real cost of registering land was about four times the official fee. In Manado, a respondent in North Sario village paid Rp 5.6 million to register a parcel of land with an area of 54 square metres, whereas a respondent in South Titiwungan village paid only Rp 2–3 million to register a block of similar size (Table 8.1). Like Monkkonen (2013: 261), we found that applicants also paid large unofficial fees to notaries in order to speed up the certification process.

One of the most fascinating findings from our two case studies was that land registration and the issuance of permits were consistently identified as being more costly than the land itself. As illustrated by Monkkonen (2013: 262), developers reported that the prices of undeveloped land in Semarang and Manado ranged from Rp 30,000 to Rp 50,000 per square metre. For a house on a 66-square-metre lot—a common size for a small house—the cost of the land would be less than 5 per cent of the final selling price of Rp 55 million.

The local BPN offices in Semarang and Manado have experimented with various schemes to give residents more secure tenure over their land, with varying results (World Bank 2012). One such scheme (Sertifikasi Massal Swadaya, SMS) is a program of collective registration of individual land parcels, initiated by the local community itself. An application for the registration of land under the SMS program would be coordinated by local community leaders, such as the head of one of the neighbourhood associations within a *kampung*.[1] SMS is considered an efficient procedure for registering land for low-income housing because it reduces the cost of procedures such as land surveying and measurement. The local BPN office in Semarang processed 500–1,000 SMS applications in 2009, increasing to 3,000 in 2010. In Manado, a similar program of routine and collective (*rutin kolektif*) land registration was instituted, requiring a minimum of 10 applicants per group. This program was implemented in four *kelurahan* in 2007 but it has not been conducted since then because of a lack of staff.

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1 These are the semi-formal associations known as Harmonious Neighbours (Rukun Tetangga, RT) or Harmonious Citizens (Rukun Warga, RW).

Another land-titling initiative is Larasita, a mobile service catering to individual applicants. To improve access to land registration services for low-income people, particularly those located in remote areas, BPN officials in Semarang and Manado travelled to those areas by car. The program aimed to cut the cost of land surveying and measurement, thereby lowering the fees charged to applicants.

In addition, several households in Manado mentioned the importance of free or discounted mass land-registration programs such as the National Land Registration Project (Proyek Operasi Nasional Agraria, PRONA). According to Government Regulation 13/2010 and Regulation 1/2010 of the Head of the National Land Agency, the aim of the PRONA program is to encourage large numbers of low-income people in designated areas throughout Indonesia to register their land. There is a set allocation for the number of applicants accommodated per project, normally of 500 in each designated district or municipality. In addition to individuals, non-government and community-based organisations that operate houses of worship, nursing homes and orphanages, as well as veterans, public officials, military personnel and police and pensioners (and their spouses), have the right to be included in this project.

It was expected that a nationwide scheme such as PRONA would expedite the process of urban land registration across Indonesia. However, implementation has tended to focus on specific projects that are designed to meet short-term objectives rather than achieve the long-term vision, and has suffered from weak coordination and a lack of consistency.

For instance, the regulations imply that the services offered through PRONA are free, because the program is funded from the national budget. This is not the case: although applicants are not required to pay the registration fee, they still need to pay the land and building transfer tax (BPHTB). We also discovered that, in Manado, applicants were still being asked to pay unofficial fees to *kelurahan* officials. Nevertheless, costs were considerably lower under the program than they would have been otherwise. For example, a respondent in South Tuminting village in Manado paid a total of Rp 1 million in unofficial fees to register land under PRONA, far less than the fees of Rp 7 million (or more) that would have been required under the usual procedures.

In 2009, the local BPN office in Semarang processed about 500 PRONA applications. The largest mass land registrations under PRONA were carried out in the 1990s with funding assistance from the World Bank. According to one private developer, large-scale and project-based land registration initiatives such as PRONA sometimes led to problems in the land registration process, such as imprecise land measurement or inaccurate recording of land tenure history. In the subdistrict of Tembalang, South Semarang, for example, this developer had obtained a land certifi-

cate through the regular land registration process, only to discover that local residents had obtained a certificate over the same parcel of land some time earlier through the PRONA scheme. Such conflicts are usually resolved through a payment to the other party to settle the claim informally.

Land acquisition

Land acquisition is another crucial step in the institutional process for developing land for housing. It is a particularly important issue for developers, because they need to purchase such large amounts of land. In Semarang and Manado, the land acquisition procedures for developers who are seeking large tracts of land for residential development are much the same. After identifying suitable land, developers must apply for a location permit (*izin lokasi*), which has to be obtained before the land is acquired. Several developers told us that the fee for a location permit was not high, but that the bureaucratic procedure was unwieldy and could take years.

Before they can start building, developers must apply for the land to be combined into a single parcel, under an HGB title. This is the case even if the land is already held under one or more freehold titles (*hak milik*). Regulation 1/2010 of the Head of the National Land Agency states that an HGB for land with an area of more than 15 hectares must be processed by the central office of BPN; an HGB for land with an area of 2,000–15,000 square metres by the regional offices of BPN; and land with an area of less than 2,000 square metres by the local offices of BPN. The same regulation states that the procedure for combining freehold rights into an HGB covering the entire area should be completed within 15 days. In practice, however, our case studies revealed that it took about 45 days for developers in Semarang and Manado to complete this process. After an HGB has been issued, the land can be split into smaller parcels that can be sold individually to the end consumers. The buyers can then upgrade the HGB title on the land to a freehold title (*hak milik*) for an official fee of Rp 750,000 per unit.

The splitting of land into smaller parcels could be considered the most complicated phase of the land acquisition process. In part, this is because Regulation 1/2010 of the Head of the National Land Agency states that a parcel of land can be split into no more than five smaller parcels. Of course, developers may need to split their land into hundreds or even thousands of parcels. This means that they need to split the land into five smaller parcels over and over again, until they have achieved the desired number of parcels. This process is time consuming and costly, as each stage of the splitting process takes several days and requires the

payment of unofficial fees. Some of the developers we surveyed in Semarang and Manado calculated that they had paid Rp 650,000–750,000 per unit each time the land was split, and one even claimed to have paid Rp 3 million per unit. These actual costs were much higher than the official fee of Rp 210,000 per unit, excluding the notary fee. In addition, the developers were required to provide basic infrastructure for new housing developments, such as access roads, water supply and electricity. The local governments did not assist with this, even if the project was designed to provide housing for low- and middle-income groups.

To speed up the land acquisition process, the local BPN offices in Semarang and Manado had attempted to implement land consolidation programs. Land consolidation is the planned readjustment and rearrangement of land parcels and their ownership so that land use becomes more efficient and infrastructure can be provided. Under Regulation 4/1991 of the Head of the National Land Agency, land consolidation can be achieved through two approaches: consolidation initiated by interested communities or other groups to restructure irregular parcels of land; and planned land consolidation that is carried out directly by BPN. However, it has been difficult to make land consolidation work. The main difficulty is that such programs require a high degree of cooperation from residents who are being asked to give up part of their land for infrastructure provision. In addition, local governments often failed to fulfil their commitments to provide basic infrastructure and facilities on the consolidated land. As a result, local communities have generally not been interested in taking part in further land consolidation programs.

In 2010, local communities in Semarang carried out land consolidations in at least three locations, involving about 100 parcels of land. This was a sharp decrease from the number of consolidations initiated by communities in 2009, involving 600 parcels of land. According to the local office of BPN, the decline between 2009 and 2010 implied an improvement in the state of land-use planning and land development policy in Semarang. In addition to the community-based consolidations, BPN initiated land consolidations involving 150 parcels of land in 2009, as part of a program to remediate formerly occupied land.

CONCLUDING REMARKS

The rapid growth of Indonesia's cities is impacting on land markets, with significant implications for the provision of housing for low- and middle-income people. This chapter has examined national policies, while also focusing on the cases of two cities that have experienced high urban growth and expansion, Semarang and Manado. In both cases, much of

the land in the inner city is registered with BPN, and therefore offers high security of tenure (see Chapter 9 by Guinness).

Based on our study of Semarang and Manado, we conclude that land policy has not performed effectively in enabling low- and middle-income urban dwellers to obtain secure housing of an adequate standard. BPN plays a central role in administering and regulating the land supply in Indonesia. In Semarang and Manado, however, the local BPN offices often overlooked the relevant national laws and regulations. Uncertainty about the cost and time required to register land prevented many low- and middle-income people from formally registering their land. In addition, developers who were interested in constructing new residential developments for lower-income groups faced critical challenges in land acquisition. In practice, the complicated nature of the local regulations for obtaining permits led to land acquisition delays. This encouraged developers to violate procedures by quietly acquiring land before they had obtained the requisite permits.

As this chapter has shown, the development of an effective land policy to facilitate housing development and enhance access to the housing stock faces at least three key challenges. The first of these is unclear property rights. Many low-income people reside in densely populated *kampung*—essentially slums—where property rights are unclear. Lacking secure tenure, some residents build their own houses on land that is rented informally from other residents who possess a right to build on or use the land (HGB). In the search for greater security of tenure, other low- and middle-income people move out of the inner city into suburban areas that suffer from poor accessibility and a lack of urban infrastructure and amenities.

The second key challenge is inefficient land development processes. The unwieldy, multi-layered bureaucratic procedure for issuing permits, not to mention the uncertain timeframe, is one of the greatest challenges for developers in Semarang and Manado. In both cities, small and vulnerable profit margins in combination with high transaction costs are discouraging private developers from focusing their businesses on low- and middle-income housing.

Finally, state agencies suffer from a lack of resources. Overall, the government of Indonesia has developed sound policies and mechanisms to encourage private developers to reduce the housing backlog for low- and middle-income households. However, the implementation and enforcement of those policies and mechanisms are inconsistent, owing to the incompleteness of the regulatory system, a lack of institutional capacity and poor-quality human resources. In the two cities we studied, this had encouraged the practice of charging informal, if not illegal, fees during the land registration process.

The failures in these three areas have had several consequences, including depriving lower-income groups of access to housing and security of tenure; pushing people to the periphery of cities or into informal settlements where they lack access to modern urban infrastructure and amenities; and discouraging private developers from building houses for low- and middle-income groups. We offer the following recommendations for possible improvements.

First, to provide an incentive for private developers to build houses for low- and middle-income people, the national government could simplify the procedure for obtaining development permits, set out a reasonable and transparent cost for registering land and issuing permits, and subsidise the cost of infrastructure, utilities and financing. In addition, local governments should be proactively involved in supplying land and basic infrastructure for housing developments catering to low- and middle-income people.

Second, the government could subsidise the cost of housing for lower-income groups, based on strict eligibility criteria. Our research in Semarang and Manado revealed that lack of access to land was the main obstacle preventing low- and middle-income people from building their own houses. The national government could provide subsidies not only to purchase homes, but also to secure land for housing through, for example, subsidised land registration programs. The Ministry of Housing would first set the criteria for low- and middle-income groups who are eligible to enter the program, based on its policy objectives. Local governments would then have the responsibility of identifying eligible people in their jurisdictions on the basis of those criteria. The subsidies would help to reduce or eliminate the socio-economic costs involved in land registration, especially surveying and administrative fees.

Third, the cases of Semarang and Manado highlight the need for reform of the regulatory framework for land policy in Indonesia, particularly regarding land administration. To speed up the housing development process, regulations on land administration and development procedures should be made clearer, simpler and more flexible. This would also provide an opportunity to get rid of counterproductive regulations, such as the land-splitting requirements outlined earlier. In addition, to reduce time and costs, BPN should cooperate with local governments to build an integrated system of land management and urban planning. It could, for example, establish a joint office providing a full range of land-related services, for individuals as well as community and private organisations. Such an integrated system would help to speed up bureaucratic processes and avoid redundant costs and steps.

Finally, BPN needs to focus its institution building more on the local level. An effective, decentralised, well-functioning land administration

system requires adequate human, technical and financial resources. Consequently, capacity development as well as supervision are of extreme importance.

REFERENCES

Bappenas (Badan Perencanaan Pembangunan Nasional) (2013a) *Indonesia Population Projection 2010–2035*, National Development Planning Agency (Bappenas), Statistics Indonesia (Badan Pusat Statistik) and United Nations Development Fund, Jakarta.

Bappenas (Badan Perencanaan Pembangunan Nasional) (2013b) *Pembangunan Perumahan: Tantangan, Visi, dan Arahan Program* [Housing Development: Challenges, Vision and Program of Instructions], Real Estate Indonesia, Jakarta. Available at http://rei.or.id/file/Materi%20Nugroho.pdf

De Soto, H. (1986) *El Otro Sendero* [The Other Path], Instituto de Libertad y Democracia, Lima.

Firman, T. (1997) 'Land conversion and urban development in the northern region of West Java, Indonesia', *Urban Studies*, 34(7): 1,027–46.

Firman, T. (2004) 'Major issues in Indonesia's urban land development', *Land Use Policy*, 21(4): 347–55.

Hudalah, D. and J. Woltjer (2007) 'Spatial planning system in transitional Indonesia', *International Planning Studies*, 12(3): 291–303.

Hudalah, D., H. Winarso and J. Woltjer (2016) 'Gentrifying the peri-urban: land use conflicts and institutional dynamics at the frontier of an Indonesian metropolis', *Urban Studies*, 53(3): 593–608.

Koppel, B. (1993) 'Land policy problems in East Asia: understanding the past and moving towards new choices', in B. Koppel and D.Y. Kim (eds) *Land Policy Problems in East Asia*, East–West Center and Korea Research Institute for Human Settlements, Honolulu: 3–47.

Leaf, M. (1993) 'Land rights for residential development in Jakarta, Indonesia: the colonial roots of contemporary urban dualism', *International Journal of Urban and Regional Research*, 17(4): 477–91.

Monkkonen, P. (2013) 'Urban land-use regulations and housing markets in developing countries: evidence from Indonesia on the importance of enforcement', *Land Use Policy*, 34: 255–64.

Nurlinda, I. (2014) 'Kebijakan penertiban dan pendayagunaan terlantar dalam kerangka reforma agraria' [Abandoned land planning and utilisation policy for agrarian reform], National Land Agency (BPN), Jakarta, 6 May.

Rieger, T., F. Djalal, E. St. Pamuncak, R. Ramon and B. Soewardi (2001) 'Decentralizing Indonesia's land administration system: are local governments and land offices ready? Evidence from 27 districts', World Bank, Jakarta, June.

Simanungkalit, P. (2009) *Rumah untuk Rakyat* [Housing for the Poor], second edition, Gibbon Books and PSPI, Jakarta.

Soedarjanto, J. (2007) 'Perspektif penguasaan tanah di Indonesia' [Perspectives on land control in Indonesia], *Land: Bulletin LMPDP*, 04(August–October): 8–10. Available at https://fliphtml5.com/efxb/djre

Soemarno, I. (2002) 'The implications of urban land policy towards housing development in Indonesia: Surabaya as a case study', PhD dissertation, Faculty of Architecture, Building and Planning, University of Melbourne, Melbourne.

Struyk, R., M.L. Hoffman and H.M. Katsura (1990) *The Market for Shelter in Indonesian Cities*, Urban Institute, Washington, DC.
Supriyanto (2010) 'Kriteria tanah terlantar dalam peraturan perundangan Indonesia' [Criteria for wasteland in Indonesian legislation], *Jurnal Dinamika Hukum*, 10(1): 51–9.
Winarso, H. and T. Firman (2002) 'Residential land development in Jabotabek: triggering economic crisis?', *Habitat International*, 26(4): 487–506.
World Bank (2012) 'Housing in Indonesia: expanding access, improving efficiency', World Bank, Washington, DC.

9 Land and housing security for the urban poor

Patrick Guinness

The informal is a key component of the city, a space of social and economic activity that is out of the sight and control of the state and out of the reach of capitalist investments. Informal arrangements have long been acknowledged in the employment sector but increasingly the term is being used to describe informal forms of land tenure, housing and infrastructure construction, health services, neighbourhood governance and so on (Guinness 2009). With migration to the cities surging, the informal has become the lifeblood of the 'insignificant masses' (*rakyat kecil*), who may constitute over 50 per cent of the urban population. A 1980s survey conducted in nine Indonesian cities, for example, showed that 63 per cent of households who claimed to own land held unregistered titles, while only 37 per cent held formal, registered titles (Struyk, Hoffman and Katsura 1990).

As urban populations continue to grow, urban planners across the world struggle to compose viable means of accommodating increasing numbers of poor within urban spaces. Urban poverty is inseparable from the insecurity of tenure and illegality of housing and income strategies characterising low-income urban settlements. In Indonesia's urban worlds, the poor have devised a vast range of informal strategies to facilitate survival, including informal trading and production, informal housing solutions and informal governance of the low-income, squatter or slum areas known as *kampung*.

Informality has become a key focus of urban planning discussions in recent years. In a special issue of the journal *Planning Theory and Practice*, the main editor, Libby Porter, defines informality as the 'other' to 'ordered, regulated, efficient' systems of management (Porter 2011: 116). Although frequently dismissed as illegitimate, anarchic, messy and dan-

gerous, the informal is not outside formal systems, Porter insists, but is instead produced by formal structures. Rather than painting the relationship between formal and informal as a static segmentation of the formal and informal spaces of the city, I suggest that it is more useful to consider the dynamic processes of formalisation and informalisation that are powered by the state, capital and citizens contesting the structures of land, housing and livelihood within the city.

Kusno (2015) writes that cities like Jakarta are shaped by three powerful overlapping forces: the creative, destructive force of capitalism; the violence of state discursive categories in managing the population; and the vernacular environment of the *kampung*. Beginning in colonial times, the creative and destructive force of capital has resulted in a dialectical relation between the formal and informal land markets, and 'continues to play a central role in making Jakarta a city of power and influence' (Kusno 2015: 55). 'Capitalist modernization rides on the back of informality' (p. 56): private enterprise commandeers land in peri-urban areas; the cheap labour that powers capitalist ventures is possible only because other family members augment household income through employment in the informal sector; and the cost of housing this workforce is externalised to the (cheaper) informal land and housing market.

The second powerful agent, the state, plays its own role in fragmenting civil society and naturalising difference by marginalising the urban underclass as the 'floating mass'—disorganised, unruly and often brutal—and targeting this mass from time to time through acts of violence, such as police raids on squatter areas or the killing of petty criminals on the streets (Barker 2001). Szumer (2015: 30) notes the effects of this 'occasional' violence on Jakarta's poor:

> The development of up-market commercial and residential space […] is often preceded by demolition and the eviction of poor residents. Large private developers with the cooperation of local government often exploit the contestable land rights of some *kampung* areas to legitimate their evictions.

The eviction of informal street vendors from public spaces is frequently accompanied by violence, as occurred in 2009 in Ayodhya Park in South Jakarta and BMW Park in North Jakarta (Bunnell et al. 2013). In outlining a 'relational approach to poverty' that could well define the conditions in which *kampung* residents survive in the city, Mosse (2010: 1,159) writes:

> While the logic of capitalist transformation and the operation of (state-approved) categories are the background engines of structural poverty, the foreground reveals rapacious exploitation and corruption, intimidation and violence that turn attention to poverty as an effect of direct assertions of power.

Constituting the third contesting force, the *kampung* 'masses' assemble their own networks to survive socially and economically and carve out a

space for themselves within the power structures of the state and capital. While theoretical constructs of the structures of poverty lay emphasis on the oppressive forces that restrict the *kampung* poor, it is also important to recognise the creative impulses of the urban poor, who make their own spaces and take pride in their own housing. Rather than being a homogeneous mass of helpless individuals, the urban poor often form strong communities led by neighbourhood leaders who play an active role in the making of the city.

My own research in *kampung* in Yogyakarta over the last four decades has revealed the diversity of strategies residents use to negotiate with and accommodate to formal systems of city management. This chapter focuses mainly on the *kampung* located along the banks of two of the rivers that run through the city.[1] In addition to the threat of formal acquisition of their spaces, the residents of these *kampung* have to cope with periodic flooding, exacerbated by the loosening by heavy rains of volcanic sand from the slopes of nearby Mount Merapi. A periodic response of government to these 'natural' disasters is to clear the banks of residents, a policy that has been strongly opposed by *kampung* communities and their middle-class sympathisers over the years.

The riverbank sites of the *kampung* are located close to formal residential and business districts with road access, so there is a clear distinction between the more affluent residents on 'street-side' and the poor of the *kampung* alleyways. Under the Dutch colonial government, land titles were issued over residential blocks on the upper riverbanks, but not over land on the steeper banks and the riverflats, which were considered uninhabitable. But as migration from rural villages to the city grew, even this land became heavily settled. The shifting sandbanks (*wedigengser*) along the river proved attractive to homeless migrants from nearby villages seeking a living in the city. Existing *kampung* communities integrated these squatter-settlers into their neighbourhood governance units—the semi-formal associations known as Harmonious Neighbours (Rukun Tetangga, RT), Harmonious Citizens (Rukun Warga, RW) and Harmonious Kampung (Rukun Kampung, RK)—and sought to inculcate a culture based on principles of harmony (*rukun*) that emphasised working together to maintain and construct *kampung* infrastructure and to build patterns of mutual assistance.

Many of these early squatters pursued illegal activities such as theft and prostitution; their social patterns were therefore vastly different

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1 Most of the material in this chapter is drawn from my research in Ledok *kampung*, Yogyakarta, from 1975 to the present, and from the observations of students during field research conducted in 2009 and 2010 in Yogyakarta under the guidance of the city's mayor, Herry Zudianto (mayor from 2001 to 2011).

from the hierarchical norms of a *kampung* elite that modelled itself on the *priyayi* norms of the court (*kraton*) nobility (Geertz 1960). The squatters of the 1970s and 1980s popularised tattoos, alcohol brewing and consumption, the eating of dog meat, skimpy clothing for both men and women, and the bravado of physical violence. They were talented improvisers who transformed the spaces of the riverflat into housing by reclaiming land behind stone walls and sandbags. On the new land emerging from the riverflat, they built houses from demolition materials found on construction sites throughout the city. They became, not the inheritors of land nor the tenants of other people's land, but the occupiers of land they had themselves created. Despite their ingenuity, and being welcomed by longer-term *kampung* residents, these squatters were frequently targeted by the police, and by city planners intent on demolishing the settlements to reduce flood risk and create a green belt. The Yogyakarta municipality saw squatters as an impediment to its desire to win the title of 'Indonesia's most beautiful city'.

The elected but non-salaried leaders of the RT (representing 20–30 households), RW (representing about 5 RTs) and RK (representing about 30 RTs, but disbanded in 1989 in favour of the newly established RW) collected land and building tax (*pajak bumi dan bangunan*, PBB) on all dwellings in the *kampung* and delivered it to the lowest level of formal salaried administration, the *kelurahan* (or, before 1989, the subdistrict or *kecamatan*). Through this tax, the informal land and housing arrangements of the *kampung* were linked to the formal urban system providing services and infrastructure for all citizens, including health clinics at the *kecamatan* offices and schools on the 'street-side' blocks outside the *kampung*. Over the years, land and housing arrangements became increasingly complicated. Most land and house ownership was not based on formal title, as land surveying costs made the application for formal title too expensive. Some of the few *kampung* residents who held land titles built houses on their land; others leased some of their land so that other people could build houses on it. Most dwellings housed several households (provided with separate entries and kitchens), who leased the rooms on a monthly rent or a pre-paid annual contract. The majority of houses on the riverflat belonged to squatters who claimed formal rights to the land on the basis that they paid land and building tax. Their rights rested on use of the commons but the payment of tax allowed them to lodge formal claims with the municipal government.

The communities living in the settlements held working bees to construct and maintain *kampung* paths, steps, railings, bridges, wells, and public washrooms and toilets; they also organised garbage services, clinics for infants and the elderly, funeral services and credit and loan activities. *Kampung* neighbourhoods with their housing, infrastructure

and services were spatially distinct from the formal realm of city regulation, yet *kampung* residents provided a range of both formal and informal employment and entrepreneurial contributions to the city economy. Even the mosques—and by 2000 there were four serving 5,000 people in Ledok *kampung*, where I spent most of my research time—were the outcome of informal arrangements, such as the gift of land by a resident for the building of first a prayer house (*mussolah*) and then a mosque funded by voluntary donations. In one case the mosque could only be built after residents had cleared a Chinese cemetery with elaborate ceremony.

House building in the *kampung* is not subject to municipal construction regulations. Residents build their houses by degree, building first in bamboo, then in wood and finally in brick with cement floors. They may then try to extend their houses, inching into public space of the commons where most neighbourhood interaction occurs. This can cause annoyance to neighbours, so households act with caution, first placing pot plants in the areas they hope to extend into before embarking on construction. Many residents pride themselves on their informally acquired construction skills, demonstrated recently in brick houses that have been extended upward with the use of steel reinforcing wire. Because the alleyways are increasingly in shadow from these higher dwellings, residents seek clothes-drying space on their roofs. Housing construction is a creative but dangerous activity, and the community and its leaders are the prime informal monitors of safety. Structural collapse or fire in one of the houses threatens all of them because of the proximity of buildings in the narrow alleyways.

FORMALISING THE INFORMAL

A major change took place in the 1990s when the Yogyakarta city government reversed its previous policy and allocated resources to construct flood walls along the rivers running through the city. Fully financed by the government and using labour contributed by the army, the construction of the walls was managed by private contractors. *Kampung* squatters were largely left out of the arrangement, with their main contribution being the provision of snacks each day for the workforce.

Once completed, the walls created new land that was quickly invaded by squatters. Pathways along the length of the walls were opened to the public, allowing smooth passageway from one end of the *kampung* to the other. These became popular gathering points for residents and the sites of numerous small businesses selling food and services. While residents were quick to informalise the spaces created by this formal construction work, they were also aware that the delineation of new spaces by the

government facilitated the granting of title over land that was no longer riverflat but dry land enclosed behind solid walls. Almost immediately there were rumours within the *kampung* that major 'street-side' businesses were negotiating to acquire the land to extend their properties. At one end of Ledok *kampung* the alleyway was actually widened to permit the entry of cars and trucks, further fuelling concerns that the informal spaces of the *kampung* were the target of capital expansion.

Government planners regard informality as chaotic, unruly, inefficient and illegal, and place corresponding emphasis on regulating and renovating such spaces for the economic development of the city. Commonly, government discourse uses the term *pakumis*—an abbreviation of *padat, kumuh dan miskin* meaning 'congested, dirty and poor'—to describe the *kampung*. Such a designation legitimises government plans to clean up these spaces. Szumer (2015: 30) cites architect and urban historian Abidin Kusno as saying that 'there is a feeling among policy makers and the middle class that *kampung* represents "under-development". That is why *kampung* has often been seen as a space of transition, which therefore can be ignored for in the end it will give way to formal housing.'

Reflecting the view of Indonesian urban planners, Zhu and Simarmata (2015: 72) conclude that 'densification of popular settlements without collective governance traps the neighbourhoods in a self-perpetuating spiral of deterioration'. According to this point of view, no virtue or order can be found in the undisciplined spaces of the *kampung*. For both the state and capital, the solution for informality and the chaos it threatens lies in the acts of formalisation oriented around control, power and accumulation. The 2005 initiative supported by the Norwegian government to create the Commission on the Legal Empowerment of the Poor (CLEP) reflects this approach. Inspired and led by Peruvian economist Hernando de Soto, the commission focused on the formalisation of property rights for the poor, thus placing their land assets in the marketplace where they could benefit from them financially (Assies 2009).

In his critique of CLEP, Assies (2009) notes that, rather than helping the poor, formalisation processes may have the opposite effect of enriching local elites and increasing inequality. Reviewing land rights reforms in African and Asian countries, Von Benda-Beckman (2003: 189) concludes that 'privatization and registration of land rights have seriously shifted the distribution of resources and led to the accumulation of the means of production by small political–economic elites, at national as well as village levels'. Porter (2011: 118) warns that formalisation ignores fundamental structures of power and cultural norms within the informal sectors of a city. She gives the example of property, which is fundamental to urban development and planning. The formal notion of property denotes unitary and stable ownership of land, which is either

state owned and controlled or individually owned. Real estate, Porter declares, is 'a narrow and limited ideal type' that dominates the planning of urban development but ignores the relational aspect of property—the use rights that people share over land or housing (pp. 116–17). Commons property, such as community gardens or *kampung* dwellings that house several families or squatter neighbours who protect each other's interests, is 'almost invisible in planning theory and practice' (p. 117). Attempts to formalise such use rights, by requiring street vendors to obtain permits, issuing titles for informal housing or replacing slums with apartment blocks, are exercises of power and control that cannot simply be assumed to improve quality of life or protect the vulnerable. Rather, they represent 'political struggles about rights and entitlements' (Roy 2005: 150, cited in Porter 2011: 118). Reviewing two studies of *kampung* in Bandung and Jakarta, Otto (2009: 186) notes that 'land registration does not inherently lead to legal security for landholders', as security of tenure depends on whether state authorities recognise such land certificates. In the *kampung* studied by Otto, the poor and other marginalised people were the most likely to miss out on the benefits of land registration. Urban development thus frequently consists of the elimination of informality to create more governable spaces and additional benefits for the privileged through formal land development, housing restrictions and other measures.

In his research on Yogyakarta *kampung*, Sullivan (1992) depicts a similar state disciplining of *kampung* governance structures. In his analysis, the RT and RW neighbourhoods, with their emphasis on community solidarity, failed to recognise the reality of state control and oppression. During the New Order, a militarisation of local government ensured that citizens policed themselves through their neighbourhood associations, guard posts and collection of land taxes. The formal creation of Japanese occupying forces during World War II, these neighbourhood associations were the building blocks of the independent Indonesian government of the 'masses'. According to Sullivan, the myth of a homogeneous and harmonious community was thus a reflection of government rhetoric and control rather than an indication of mutual support and of the collective organisational capacity of local neighbourhoods.

In 1998–99, in response to the Asian financial crisis, the Yogyakarta municipal government, with World Bank funding, intervened in the *kampung* to run poverty relief programs designed to improve *kampung* infrastructure and provide youth employment. Contractors were hired to employ casual local labour to improve pathways and steps within the *kampung*. These state intrusions into the informal spaces of the *kampung* illustrate the ways in which the development programs of the state and capital can displace and weaken informal strategies to improve the *kampung*. While local residents welcomed the infrastructure improvements,

they were strongly critical of the government for the way in which the projects were managed. *Kampung* citizens attested to their own construction skills, which would easily have qualified them for contracts, and bemoaned the lack of consultation with the community over the design of the projects. *Kampung* youth were employed as casuals but they were not given any training and on completion of the projects were laid off with little prospect of further work.

Similarly, in the case of the flood walls, the new land created by the walls might well have been claimed by neighbourhood communities for public recreational areas if community leaders had been given control of the project and developed the confidence to manage the situation. Instead, the land was quickly occupied by adjacent residents and new migrants. In this case, it appears that the agency of individual residents remained strong, even though the formalisation strategies of the state had weakened communal structures and depleted the commons.

RESISTING FORMALISATION PROCESSES

In the face of the power of the state and capital, the *kampung* are 'at once a space of subordination and resistance to capitalist modernisation', developing 'their own networks in the *kampung* neighbourhood to survive socially and economically in the city' (Kusno 2015: 60). Allowing space for informal strategies to flourish has enabled the urban poor to improve their livelihoods and welfare. In the words of Ananya Roy:

> If formality operates through the fixing of value, including the mapping of spatial value, then informality operates through the constant negotiability of value and the unmapping of space (Alsayyad and Roy 2004: 5).

The 'unmapping' of space despite the formalisation strategies of the state expresses the many ways in which the urban poor demonstrate their capacity not just to survive but to improve their living conditions, as my research in Yogyakarta indicates. The informal land tenure system of the poor focuses on land occupation rather than land title. The head and committee members of the RWs and RTs, and other neighbours, vouch for the right of residents to reside on the land, to build homes according to community rather than formal state standards and to establish livelihoods in the spaces left vacant by state and capitalist processes. Many *kampung* residents are dependent on the river to make a living, by excavating sand for sale to construction sites, growing bananas, bamboo and vegetables, breeding fish, or raising goats, ducks and chickens on the riverflat. For them the river waters are life giving, despite the risk of floods every 10 years or so. In extending their homes to a second or third

storey and in installing electricity by tapping into the overhead wires or the supplies of a neighbour, they are often in breach of building and planning codes. However, no one carries out such activities outside the scrutiny of neighbours and neighbourhood leaders. The legitimacy of land and building occupation in the *kampung* is a product of informal neighbourhood approval rather than state licence, and it is on this community that each resident relies to protect his or her right to continue to live and work in the *kampung*. Neighbourhood leaders prefer to facilitate the welfare of fellow residents than to enforce formal regulations. To do otherwise would be to quickly lose the trust and cooperation of their RT and RW communities. I observed a clear example of such informal governance when a riverflat woman defrauded her neighbours of funds from a rotating credit group and absconded. Without resorting to formal court proceedings, the neighbourhood leaders sold her house on the riverflat to repay her debt to the rotating credit group.

Apart from these informal land tenure and housing construction arrangements, I found many other powerful demonstrations of informality in the neighbourhood networks that manage *kampung* communities: the informal systems providing urban services such as electricity, water, sewerage and rubbish disposal, and the informal health and schooling services. The RT and RW committees organised free clinics for the elderly and for mothers with infants, and established libraries and tutoring services for the *kampung* children. They constructed washing and toilet facilities supplied from common wells, and arranged for wealthier homes to share their electricity and piped water with poorer ones. They employed carters to collect rubbish from designated collection points and dispose of it, and built guard posts that were manned by residents on a roster system.

The decentralisation of central government administration in 2001 has resulted in increased direct funding for municipal authorities but has had little effect on the *kampung*. The residents of the *kampung* (especially the poor) remain stubbornly resistant to government intervention. Van Voorst (2014) observes that the riverbank residents of Jakarta are not inclined to put their trust in municipal government to rescue them from floods. Of the three key risks that they face of flood, eviction and poverty, the one they fear most is the repeated government threat to evict them from the land to allow the development of private housing and commercial projects. Thus, in times of flood, these riverside residents put more faith in their own resources of communal assistance. Van Voorst identifies four styles of risk handling practised by *kampung* residents in Jakarta: take-it-as-it-comes toughness (demonstrated by the group she calls *orang antisipasi*); collaboration with public officials (*orang ajar*); dependency on external aid institutions (*orang susah*); and preparedness (*orang siap*).

While the responses of collaboration with public officials and dependency on external aid institutions (demonstrated by the *orang susah* and *orang ajar*) are generated by the 'pressures of the structures of marginalization and power inequality' (Van Voorst 2014: 222), the responses of toughness and preparedness (demonstrated by the *orang antisipasi* and *orang siap*) indicate, in addition, the residents' capacity to create their own solutions.

The ability of *kampung* communities to respond to their often powerless and marginal situations has been recognised in Yogyakarta by the People's Shelter Foundation (Yayasan Pondok Rakyat), an NGO founded in 1985 by a Catholic priest and university lecturer, Romo Mangun, and students from the architecture faculty where he taught (Guinness 2009). In 1983, while living with a riverside community, Romo Mangun went on a hunger strike to resist government demolition of the residents' homes. Later, his students decided to bring *kampung* life to the attention of the public through photographic exhibitions, art and theatre performances and popular journals, all authored by *kampung* residents, to counter the 'street-side' perception of *kampung* as anarchic and uncultured.

PARTNERING THE INFORMAL WITH THE FORMAL

Are there processes of formalisation of informal urban spaces that would allow the ordinary people (*rakyat*) to thrive, and could such processes accommodate the strengths of *kampung* society, such as its informal mechanisms of local property rights and its housing norms? The danger for *kampung* residents is that the formalisation of their land and housing might lead to loss of control of those assets to investors, who would demand that the land and housing be put on the formal market where their investments could be protected. This would result, not in empowerment, but in further marginalisation of residents as they were evicted from the *kampung* and driven to the city outskirts or back to their villages of origin where access to employment opportunities and income would be limited (Jellinek 1991).

This was the problem faced by Joko Widodo (Jokowi) in 2012 when he was elected governor of Jakarta on the basis of a reputation as an urban reformer forged as the mayor of Solo in Central Java. Again on the basis of this reputation, in 2014 he was elected president of Indonesia. He is quoted by his biographer, Endah, as saying that development in Jakarta had served only the 'haves' and had ignored the margins, the people of the *kampung*. Jokowi espoused the principle that development should start from the margins: 'The improvement of life in *kampung* will automatically improve the general well being of the city' (Kusno 2015:

60). His aim was to improve the quality of life of the poor in terms of housing, health and schooling, to engage them as social partners in the development of the city and to accommodate them more fully within the democratic system.

Jokowi initially adopted this strategy of consulting the poor during his time as mayor of Solo, not far from Yogyakarta in Central Java. He negotiated with the city's street vendors to vacate public recreational spaces and relocate to a newly created traditional market (*pasar*). He also arranged for squatters to vacate riverside areas for formal housing. So successful was he that in 2010 he was re-elected mayor of Solo with 90 per cent of the vote.

Jokowi's administration had to work within the new central government regulations on urban design (Law 26/2007 on Spatial Planning), which stipulated that municipal governments must include plans for the informal sector in their spatial plans and set aside at least 30 per cent of their urban areas as public space—a provision that informal street vendors (who were heavy users of public spaces) could potentially have used to their advantage (Rukmana 2011: 141). However, Jokowi took spatial planning to a new level by inviting the participation of informal vendors in the planning process. Following 104 public meetings conducted over seven months, his administration managed to persuade 989 street vendors to vacate Banjarsari Monument Park, in return for a guarantee that the land would not be offered for private sector residential or commercial use but retained for public recreational space. This initial success in respecting the wishes of informal traders was followed by the negotiated relocation of vendors from other sites designated for pubic recreational space. When Jokowi, along with the Yogyakarta city mayor, Herry Zudianto, was awarded the Bung Hatta Anti-Corruption Award in 2010, one of the judges commented that the Solo municipal administration 'always communicated with the street vendors instead of just evicting them as is commonly seen in other cities' (Bunnell et al. 2013: 864). Jokowi promised the vendors that no minimarkets, supermarkets or malls would be constructed within 500 metres of a traditional market. Similarly, when his administration negotiated the relocation of 1,500 residents from the banks of the Bengawan Solo and two other rivers, he promised to create public recreational space and not to allow capital expansion into the cleared areas. Jokowi recognised that partnership with the informal sector was vital for the health of the city and that this could only be guaranteed by protecting the city's informal spaces from capital expansion.

Bunnell et al. (2013: 872) note that Jokowi's approaches to the *kampung* residents of Solo were not always consistent or successful. After the Banjarsari success, the authors say, subsequent relocations of street vendors were poorly resourced and handled with much less sensitivity; the reno-

vation of other traditional markets was less successful in allowing the relocated street vendors to meet their livelihood needs; and a municipality-organised neighbourhood competition to beautify the city's *kampung* led to the social marginalisation of many in the settlements. Engaging with the poor as consulting partners in the development exercise proved a more tricky balance in practice than the political rhetoric had claimed.

In his more recent role as governor of Jakarta, Jokowi launched the Kampung in a Row (Kampung Deret) program to relocate very low-income residents in Jakarta's *kampung* to low-rise apartment buildings. Residents of informal settlements were relocated to 'newly built rows of rectangular orange and grey concrete apartments' (Szumer 2015: 31), in a manner reminiscent of earlier Jakarta policies (Jellinek 1991). As in similar experiments in Solo, many of the relocated residents were disappointed at the lack of consultation about the design of the new buildings. Szumer (2015: 31) quotes a researcher at the Rujak Centre of Urban Studies in Jakarta as saying that '*Kampung* are not just a neighbourhood, they are a culture; it's how people interact and build their lives'. The researcher goes on to stress how important it is 'to collaboratively design social housing that facilitates the way people lived earlier, so people can have housing that facilitates a social and economic space, which is difficult in these vertical buildings'. Although the Jakarta municipal government did inform and consult with 'the people', it was not open to delegating power to citizens through collaborative design, preferring instead to restrict participation of the *kampung* citizens to the written state planning structures. Thus, the formalisation of informal spaces tended towards the exercise of power and control rather than addressing questions of urban justice (Porter 2011: 118).

EMPOWERING CITIZENS

Where municipal administrations have sought to empower *kampung* residents, the latter have demonstrated a capacity to plan and implement infrastructure and social programs of their own design to suit their own needs. After the 2006 earthquake, which devastated parts of Yogyakarta and much of the area to the south of the city, the government financed the reconstruction of infrastructure across the city. In the *kampung* of Ledok, RW residents managed the construction of a 6-metre-high retaining wall and access ramp from the upper path to the riverside *kampung* beneath, at a cost of Rp 45 million. The RW committee used a resident civil engineer to manage the project and organised local paid labour. It suggested variations to the design in order to widen the ramp between the two levels for motorcycles and install a turning circle above for four-wheel

vehicles, thus considerably improving access for delivery vehicles and for residents who owned motor vehicles. It provided a full account of the finances to the *kelurahan* office to which it was accountable.

In the post-Suharto era, there have been notable attempts to involve citizens in the planning and implementation of development programs. In 1999, in cooperation with the World Bank, the national government established the Urban Poverty Program, the urban equivalent of the rural Kecamatan Development Program; in 2007 these programs were folded into the National Program for Community Empowerment (Program Nasional Pemberdayaan Masyarakat, PNPM). PNPM operates on the principle that, to have the best chance of success, projects to improve welfare need to be driven by the communities themselves. By 2012 PNPM had become a $1.5 billion annual program, with 90 per cent of its funding coming from national and local governments. PNPM funding expanded further in 2015 following the passage of Law 6/2014 on Villages. The Village Law increased the funding for village development to $4.4 billion, funded almost exclusively by the Indonesian government.

Since 2004, participatory planning has been further institutionalised through the *musrenbang* program, which engages community stakeholders in annual consultative forums at the *kelurahan* and *kecamatan* levels (Widianingsih and Morrell 2007). This program seeks to engage the 'masses' in planning and implementing their own local improvements, including financial management and program oversight, although the final decisions on projects are made by local government (unlike in the case of the PNPM program).

In Yogyakarta, citizen engagement has focused on the RW, led by a managing committee called the Community Self-help Group (Kelompok Swadaya Masyarakat, KSM). These KSMs in turn nominate representatives to a *kelurahan*-level committee representing all *kampung* in the *kelurahan*, the Community Self-help Body (Badan Keswadayaan Masyarakat, BKM), which is responsible for distributing and monitoring the budget. The term *swadaya*—meaning 'self-help'—in the titles of these two types of committee draws attention to the goal of self-management at the local level. Technical facilitators are employed to advise on the construction of infrastructure, and social facilitators, often from the *kampung*, are appointed to assist with the social aspects of the projects. The proposal of projects and their implementation are in the hands of the elected KSM group in each RW.

We can compare the efforts of the Jokowi administrations in Solo and Jakarta in negotiating with informal traders and riverside squatters with the recent efforts of *kampung* residents in Yogyakarta, through the PNPM program, to reconstruct their lives after flood and earthquake. Because PNPM donors wanted to deliver funding directly to Yogyakarta's neigh-

bourhood RW populations, they liaised with the BKM committee representing each *kampung*, rather than the *kelurahan* office. The BKM was intended to operate as a parallel institution to the *kelurahan*, facilitated by the *kelurahan* office but answerable financially to a branch of PNPM. Each BKM committee was responsible for vetting proposals for funding advanced by the KSMs it represented. Funding for approved projects—delivered in three instalments of 40 per cent, 40 per cent and 20 per cent—was managed by neighbourhood groups, independently of the RW and RT leaders. PNPM facilitators monitored the budgets, and neighbourhood groups had to account for their spending before the next instalment of funding could be delivered. These arrangements meant that citizens were directly engaged in planning and implementation, and played a role in bridging the gap in planning and skills development between themselves and the government. At the same time these procedures represented the formalising of informal mechanisms within the *kampung*.

It was clear in Ledok *kampung* that when PNPM program planning and implementation were located at the RW level within the *kampung*, impressive progress was made. Where I worked there were three KSMs reporting to the BKM at the *kelurahan* level. Each KSM committee was composed of six *kampung* residents (including two women), two from each of the three RTs that had elected it. One of these KSMs reported in 2013 that it had completed 10 projects with a total value of Rp 45.8 million, including Rp 10.6 million of community contributions of materials and labour. Each project was assigned to a further group of six residents elected by the RT members to oversee its implementation. The projects included paving of paths, repair of wells and washrooms, construction of drains and the erection of a watertank tower to supply water to surrounding homes.

I noted significant growth of confidence and ability among these small committees of men and women, some of whom were among the poorest in the neighbourhood, working with the RT and RW officers but accountable to the BKM committee and acting under the watchful eye of fellow residents. As a result, the members of one KSM went on to build an RW meeting hall in the only space available (above existing public washrooms) without a PNPM grant or any oversight from the BKM or *kelurahan* office. Instead, they worked with RW leaders to collect a small monthly contribution of Rp 3,000 from each household, and requisitioned other funds from wealthier current and former residents. Completed in 2014, the meeting hall was just one in a series of locally funded projects that included washrooms, pathways and a pedestrian bridge over the river.

Thus, the PNPM program has been able to tap into existing local capacity to improve physical infrastructure and consolidate community

social and credit-support organisations. This in turn has given many *kampung* the capacity to undertake further infrastructure projects, with or without PNPM help, although not without some formalisation of their financial and contractual arrangements.

Despite its strengths, however, the PNPM program continues to face the threat of overformalisation and consequent loss of control to city elites. One observer notes the tendency of neighbourhood elites to commandeer resources, explaining that though the *kelurahan* is 'the closest and the best place to tackle the issues of poverty at the community level', it is seriously riven by wealth distinctions and individualism (Asmorowati 2012: 39; see also Marcus and Asmorowati 2006). While this observation may be accurate, the *kelurahan* is only the lowest level of formal municipal administration and not the repository of the informal commons or of the community strengths found in the RWs and RTs. The BKM is intended to bridge the gap between the formal and the informal within the *kelurahan* by authorising *kampung* representatives to manage PNPM funds. But Asmorowati (2012: 45) notes a lack 'of transparency and accountability in financial management of the […] BKMs, which has led to corruption or misuse of the project funds by the members (read the community)' (see also Wilson et al. 2009). Where the formal procedures of the BKM have become opaque to *kampung* residents, the PNPM program is in danger of being co-opted by elites within and beyond the community, but where BKM members reflect the aspirations of the *kampung* residents, they are able to counter the formal controlling interests of *kelurahan* officials.

The informal capacity of the *kampung* was put to the test during the 2009 flood when the rivers' flood walls were breached by waters mixed with volcanic sand from the erupting Mount Merapi. By this time many of the riverflat residents behind the walls had extended their brick homes to two or even three storeys, in a dramatic illustration of their development of commons space. The floodwaters deposited sediment up to a metre thick across the riverflat, making the ground floors of most houses uninhabitable. Residents were not able to remove the sediment because the water table had risen, so they were forced to retreat to their second storeys or to extend their homes upward. This was a demanding exercise, as it took many months for households to scrounge enough building materials to renovate their homes. In the meantime many slept in tents or out in the open, or stayed with neighbours supported by communal support structures.

Without government relief funding, some residents, particularly single mothers and the elderly, were still without permanent housing in 2012 when a non-government organisation, Habitat for Humanity, was given permission by the city mayor to circumvent the *kecamatan* and *kelurahan*

levels of administration and negotiate directly with *kampung* residents to replace the worst-affected housing. In Ledok, Habitat for Humanity approached one of the RW heads with an offer to finance the building of new brick houses for the poorest residents. This led to the construction of a hundred houses built to a standard specification, with large rooms and indoor toilets, and with each house owner contributing labour and snacks to the contract builders. This project offered another avenue to strengthen informal mechanisms, by bypassing formal government and dealing directly with the community. As a consequence, the most marginalised inhabitants of the *kampung* acquired an asset that many of them could then subdivide and rent out.

Under the innovative mayor of Yogyakarta, Herry Zudianto, the formal city administration continued to search for new ways of informalising city arrangements. When the mayor called for the city to have 'zero rubbish', the women in one of the RWs in Ledok responded by developing a project to separate rubbish into different bins located in each RT for glass, metals, paper, plastics and wet rubbish, under the supervision of an RT woman organiser. The mayor was so impressed by this initiative that he agreed to launch his 'zero rubbish' campaign in this RW.

The women sold the recyclable materials they collected to recycling companies and used the income to purchase flowerpots and other materials to improve the local environment. They processed the wet rubbish into compost that they either sold or used locally to sustain plantings of shrubs in communal pots along the flood wall and alleyways. Bunnell et al. (2013: 869) describe a similarly successful composting program in Surabaya; by 2009, 30 per cent of all RT neighbourhoods in the city were said to be participating in this waste segregation and composting program. In the face of a 'dominant storyline' about government 'corruption rather than accountability or good governance', Bunnell et al. (2013: 862) draw attention to such success stories of decentralised governance through the linking of informal and formal approaches.

CONCLUSION

This chapter has raised questions about formal interventions in the planning and management of informal city spaces. Ananya Roy's depiction of informality as the 'unmapping' of space draws attention to informality and the commons as 'alternative and potentially challenging modes and relations to dominant orders of market exchange and neoliberal government' (Porter 2011: 118). The negotiation of values and modes of operation between the proponents of formal and informal modes of governance and formal and informal conceptions of property and space is developing

in diverse and exciting ways in Indonesian cities, fuelled by demand for decentralisation and participatory governance. As the above accounts of *kampung* developments in Yogyakarta, Solo, Jakarta and Surabaya demonstrate, this interchange is dynamic, marked by both the formalisation of *kampung* practices and the informalisation of government practices. While Bunnell et al. (2013) draw attention to the key role played by the city mayors in all four cities in extending opportunities to residents of informal spaces, this chapter has emphasised the equally important role of leadership and initiative within the community—through individual men and women, through the neighbourhood heads and through the KSM and BKM committees. As Van Voorst's (2014) study demonstrates, there is a strong contingent of *kampung* residents ready to respond imaginatively to both emergencies and opportunities, thus enhancing the values of the commons against the power and control of formal planners. It is these formal–informal partnerships that potentially offer the most hope for the 'masses' of urban poor.

In her review of the PNPM program, Li (2006) warns that the government focus on a homogeneous community is a way of making collective existence 'intelligible' to government planners, and therefore controllable, but runs the risk of ignoring the structures that perpetuate chronic poverty. In this chapter I have focused, rather, on the overlapping of three powerful processes that create the city: capitalist interests, state power and vernacular informality. I have suggested that the vernacular *kampung*, the commons of the urban poor, is neither the property of capital nor a construction of state discourse, but is caught in a contest and negotiation with these forces to achieve improved prospects for the urban poor. While there are important ways in which the state can begin to dismantle the structures of poverty—for instance, by strengthening local governance or by defending informal economic interests against the expansion of capital—*kampung* residents have also shown that they have the capacity to negotiate their own conditions of well-being. This has included a capacity to transform land from riverflats to dense settlements and to stake a claim to occupy that land in perpetuity, despite government reluctance to grant title to the residents. Repeated government attempts to evict the squatters have been rebuffed as a result of the partnerships the *kampung* squatters have managed to form with influential middle-class residents of the city.

Like Bunnell et al. (2013), I have stressed the instances of social progress through community empowerment that suggest a viable third stakeholder, alongside the state and the commercial sector, in the development of the city. Steady improvements in housing, public spaces and well-being achieved through cooperation between the formal and informal sectors offer a more encouraging and empowering solution for

citizens than their incorporation into formal structures dominated by elite planners. Within city structures shaped by the three forces of capital, state and local citizens, the poor have consolidated some power for themselves in the informal spaces of the city. Long ignored as disorganised groups of largely ill-informed and poorly educated residents without the resources to improve their own economic and living conditions, Indonesia's *kampung* neighbourhoods in fact represent the best chance in the immediate future to significantly reduce the levels and effects of poverty through the strength of their informal communal resources.

REFERENCES

Alsayyad, N. and A. Roy (2004) 'Prologue/dialogue. Urban informality: crossing borders', in A. Roy and N. Alsayyad (eds) *Urban Informality: Transnational Perspectives from the Middle East, Latin America and South Asia*, Lexington Books, Oxford: 1–6.

Asmorowati, S. (2012) 'Partnership for good civil society and sustainable community development: the interface of bureaucracy, community, and facilitator', *Jurnal Masyarakat, Kebudayaan dan Politik*, 25(1): 34–48.

Assies, W. (2009) 'Legal empowerment of the poor: with a little help from their friends?', *Journal of Peasant Studies*, 36(4): 909–24.

Barker, J. (2001) 'State of fear: controlling the criminal contagion in Suharto's New Order', in B. Anderson (ed.) *Violence and the State in Suharto's Indonesia*, Southeast Asia Program Publications, Ithaca, NY: 20–53.

Bunnell, T., M.A. Miller, N.A. Phelps and J. Taylor (2013) 'Urban development in a decentralized Indonesia: two success stories?', *Pacific Affairs*, 86(4): 857–76.

Geertz, C. (1960) *The Religion of Java*, University of Chicago Press, Chicago, IL.

Guinness, P. (2009) *Kampung, Islam and State in Urban Java*, NUS Press, Singapore.

Jellinek, L. (1991) *The Wheel of Fortune: The History of a Poor Community in Jakarta*, Allen & Unwin, North Sydney.

Kusno, A. (2015) 'Power and time turning: the capital, the state and the *kampung* in Jakarta', *International Journal of Urban Sciences*, 19(1): 53–63.

Li, T.M. (2006) 'Neo-liberal strategies of government through community: the social development program of the World Bank in Indonesia', International Law and Justice Working Paper 2006/2, Global Administrative Law Series, New York University School of Law, New York, NY.

Marcus, A. and S. Asmorowati (2006) 'Urban poverty and the rural development bias: some notes from Indonesia', *Journal of Developing Societies*, 22(2): 145–68.

Mosse, D. (2010) 'A relational approach to durable poverty, inequality and power', *Journal of Development Studies*, 46(7): 1,156–78.

Otto, J.M. (2009) 'Rule of law promotion, land tenure and poverty alleviation: questioning the assumptions of Hernando de Soto', *Hague Journal on the Rule of Law*, 1: 173–95.

Porter, L. (2011) 'Informality, the commons and the paradoxes for planning: concepts and debates for informality and planning', *Planning Theory and Practice*, 12(1): 115–20.

Roy, A. (2005) 'Urban informality: toward an epistemology of planning', *Journal of American Planning Association*, 71(2): 147–58.

Rukmana, D. (2011) 'Street vendors and planning in Indonesian cities', *Planning Theory and Practice*, 12(1): 138–44.
Struyk, R.J., M.L. Hoffman and H.M. Katsura (1990) *The Market for Shelter in Indonesian Cities*, Urban Institute Press, Washington, DC.
Sullivan, J. (1992) *Local Government and Community in Java: An Urban Case-study*, Oxford University Press, Singapore.
Szumer, Z. (2015) 'The contested modernisation of Jakarta', *Arena Magazine*, 136(June–July): 28–32. Available at http://search.informit.com.au/documentSummary;dn=263921535316876;res=IELHSS
Van Voorst, R. (2014) 'Get ready for the flood: risk-handling styles in Jakarta, Indonesia', PhD thesis, University of Amsterdam, Amsterdam.
Von Benda-Beckman, F. (2003) 'Mysteries of capital or mystification of legal property?', *European Journal of Anthropology*, 41: 187–91.
Widianingsih, I. and E. Morrell (2007) 'Participatory planning in Indonesia', *Policy Studies*, 28(1): 1–15.
Wilson, S., T. Kennedy, A. Wardhani, S. Gulo, R. Wijayanti and M. Sugesti (2009) 'The role of the BKM in the funding of public facilities: Ledhok Tukangan', in P. Bawole and P. Guinness (eds) *Experiencing the Dynamics of Kampung Life*, Duta Wacana University Press, Yogyakarta: 134–44.
Zhu, J. and H.A. Simarmata (2015) 'Formal land rights versus informal land rights: governance for sustainable urbanization in the Jakarta metropolitan region, Indonesia', *Land Use Policy*, 43: 63–73.

PART 4

Agriculture, land tenure and livelihoods

10 After 200 years, why is Indonesia's cadastral system still incomplete?

Pierre van der Eng

In October 2014, President Joko Widodo appointed Ferry Mursyidan Baldan as Indonesia's minister of agrarian affairs and spatial planning. Supported by a new ministry, he assumed responsibility for agrarian affairs, including the vexed issue of rural land registration. The creation of a new ministry is indicative of the urgency to sort out the complications of Indonesia's agrarian affairs. But urgency to resolve agrarian issues is nothing new. In response to public discussions, official investigations have looked into issues of land registration and governments have vouched to resolve them on many occasions during the past 200 years. What were the shortcomings of the administrative processes and structures that were put in place in the past to resolve agrarian issues, and why is the coverage of Indonesia's cadastral system still not comprehensive?

This chapter offers a historical overview of attempts to introduce a cadastral system of measurement, registration and certification of land titles in rural Indonesia since 1813. Its purpose is to help explain the circumstances that led to the current situation of sustained uncertainty of land titles in Indonesia, particularly in rural areas. What was done to safeguard rights to farmland in rural areas of Indonesia and to assess the success or failure of such efforts? To answer those questions, this chapter will discuss in a broadly chronological fashion how the measurement, registration and certification of farmland developed in response to land taxation and agrarian legislation.

LAND TAX AND LAND REGISTRATION IN THE NINETEENTH CENTURY

Indonesia has long been a legal patchwork, reflected in the ways in which rights to land were defined and upheld. For a long time, the laws and regulations of the Dutch colonial state applied only to areas under direct colonial rule, and Indonesia's self-governing principalities retained much of their legal systems. Legislation of the colonial state affecting rights to land gradually spread across the country as part of the extension of colonial rule across Indonesia during the late nineteenth century (Lindblad 1989). After Indonesia's federal structure was abolished in 1951 (after independence was achieved in 1949), the legal system remained a combination of colonial laws and regulations, new legislation and regulations, and the vestiges of regionally very different customary (*adat*) regulations.

The unification of agrarian legislation started with the extension in 1813 of a real estate tax (*verponding*) in the city of Batavia to the surrounding areas, and later to other urban areas. The tax was based on the assessment and registration of real estate, including land, which led governments of cities and towns to establish offices providing cadastral services. Levied on a fee-for-service basis, they facilitated the orderly transfer of land (Jaarsma 1918: 12–20; Colombijn 2014: 141–80). In rural areas the extension took the form of the land tax (*landrente*), introduced in Java in 1813. Thus, rural areas were excluded from the real estate tax, and therefore from these cadastral services. This situation formally continued in rural Indonesia until 1961.[1]

The introduction of the rural land tax marked the start of continuing official and public discussions about ways to make the tax more equitable, because reliable statistical data were not available for that purpose. Initial intentions to introduce a cadastral system, or cadastre, in rural Java were soon abandoned in favour of delegating tax collection to village heads. The 1819 land tax ordinance effectively made land tax liabilities subject to haggling (*admodatie*), that is, to annual negotiations between village authorities and colonial administrators (Teng 1933: 13–15).

The arbitrary nature of the land tax liability triggered repeated calls for a more objective methodology (Hugenholtz 1994). The government ordered cadastral–statistical surveys (*kadastraal–statistieke opnamen*) during 1864–79 spanning nine of Java's 23 residencies. The aim was to improve the collection of statistical data at village level, including the measurement and recording of farmland. In each residency a cadastral–

1 The exception was rural land occupied by foreign plantation and mining companies after 1870, which generally had their landholdings surveyed by the cadastral offices on a fee-for-service basis.

statistical office organised land surveying, recorded findings onto 1:2,500 land maps and supervised the maintenance of village registers containing land-use data. The project was eventually halted because of the high cost of surveying and resurveying village lands; slow progress; and what were later demonstrated to be unreliable outcomes, due to the use of non-standardised measurements and a reliance on untrained administrators rather than skilled technical personnel to take the recordings (Jaarsma 1918: 16, 47–8).

Consequently, land tax liabilities remained subject to haggling. In principle, village administrators were required to establish and maintain registers of landholdings and landholders liable for land tax. But malversation marred the system. Village authorities took advantage of the ignorance of farmers when assessing tax liabilities, and abused their right to reserve village land as payment for their administrative services (*tanah bengkok*). They also condoned the practice by which unscrupulous large landowners encouraged farmers who were seeking loans to sign papers that purported to offer land as collateral, but actually transferred ownership. Colonial officials, particularly the inspectors (*controleurs*) in the regencies (*afdeelingen* or *kabupaten*), often expressed indignation about the injustice of such malversation in newspaper articles. They also objected because the consequent conflicts over land were brought to the regional law courts (*landraad*) over which they presided. There, they often had to pass judgment on the basis of scant and imprecise documentation and unreliable witness statements.

There were also technical problems with the land tax system. For example, regional officials continued to use the village land tax maps created in the 1860s and 1870s, even though they were inaccurate and outdated. There were inconsistencies across regions in how village registers were maintained, and the remeasurement of farmland to account for changes in land use was done haphazardly. The annual haggling about tax liabilities focused on irrigated land (*sawah*) that produced rice, while assessment of the liabilities of taxable upland areas remained based on casual visual inspections. In the context of the expansion of farm agriculture into upland areas since the 1870s (Van der Eng 1996: 24), this increased inequities in land tax liabilities between farmers cultivating irrigated land and those cultivating upland areas.

THE 1870 AGRARIAN LAW AND THE LAND TAX REGISTERS

In 1830, the Dutch colonial government introduced a policy known as the Cultivation System. It required farmers to grow export crops on a portion of their land or to provide labour in-kind. During the 1860s, oppo-

nents of the Cultivation System spurred public debate about ending the system in favour of opening up rural Java to private enterprise. A draft agrarian law drawn up in 1865 advocated the establishment of a rural cadastre that would record only individual land ownership. Opponents insisted that not enough was known about the rights to land of native Indonesians to assume that such rights included the notion of individual land ownership. They succeeded in having this concern articulated in other legislation in 1866 as the right to self-determination (*beschikkingsrecht* or *hak ulayat*) for local communities in Indonesia.

As a result, the 1870 Agrarian Law recognised customary land-tenure regulations by stealth. The system it put in place defined and guaranteed land tenure for indigenous Indonesians, but did not prescribe a rural cadastral system. It facilitated access to land by private companies, but prohibited non-native residents, including companies, from owning rural land. Instead, non-natives could only take out leaseholds for a maximum of 75 years on land not used for sedentary farm agriculture, or 2.5 years on existing farmland. The law required the colonial government to ensure that such arrangements would not breach the land rights of native Indonesians. This principle was formalised with the 1870 domain declaration (*domeinverklaring*) and the 1875 alienation prohibition (*vervreemdingsverbod*). The first declared all land in areas under direct colonial rule to be state domain, as far as it was not proven to be owned by anyone. The second prohibited the sale of land by native Indonesian landholders to non-natives.[2] Together, these regulations articulated the government's intention to protect farmers from land alienation by predatory non-natives, particularly European entrepreneurs and ethnic Chinese crop forestallers and moneylenders.

The government briefly considered introducing a rural cadastral system, but did not proceed for two reasons. By the 1870s the experience with the cadastral–statistical surveys had revealed that the costs were likely to exceed land tax revenues. And further official and public discussions about the nature of land tenure precluded a registration system that defined individual landholdings.

Such debate reinforced the notion that village autonomy and indigenous institutions needed to be respected and protected, and that *adat* regulations existed parallel to the system of law of the colonial state. This spurred an urge to understand, protect and accommodate regionally different forms of *adat* regulations. The notion took hold that it was up

2 This limited land ownership by non-native residents of colonial Indonesia to urban areas and to the so-called 'private estates' along Java's north coast. Farmland under customary regulations was in principle also state domain, but in practice the colonial state did not seek to control it.

to local communities to arrange agrarian affairs, possibly in the form of communal ownership (*communaal bezit*).[3] Confirming this principle, the first statistical data for 1882 on tenure of farmland in Java showed that 57 per cent of farmland was under communal ownership (Koloniaal Verslag 1883: Table 1).[4]

The study and identification of *adat* regulations flourished in the context of the so-called Ethical Policy introduced in 1901, which required the government to accept greater responsibility for the welfare of Indonesians (Van der Eng 2004). From 1901, *adat* champion Cornelis van Vollenhoven orchestrated a series of local studies based on data supplied by colonial administrators throughout Indonesia (Van Dijk 2005: 135–7). The studies confirmed plurality in the definition of land rights across Indonesia. They also embedded the belief that customary regulations with communal land tenure prevailed in rural Indonesia; that such systems were essentially communalist and static in nature; and that customary arrangements such as communal land ownership had to be accommodated in agrarian policy (Fitzpatrick 2007: 136). Together, they provided arguments against the introduction of a rural cadastre for the purpose of registering individual landholdings.

Running parallel to the discussion about the nature of land tenure was a public debate about issues of equity and fairness in the assessment of land tax liabilities. Imperfections in the land tax system and malversation with land titles were public knowledge at the time (Lucardie 1880; Verstijnen 1890). Half-hearted official attempts to change the land tax system were unsuccessful and calls for improvement and systemisation of the land registration system continued, including calls for a cadastre (*inlandsch kadaster*) that would properly survey and certify landholdings in rural Java and improve equity in land tax liabilities.

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3 The term 'communal ownership' is commonly used in the literature, and is used in this chapter, even though there were regional differences in how it was defined; a better term may be 'land regulated by customary rights'. Goh (1986) discusses the extensive body of literature in the late nineteenth and early twentieth centuries on the notion of communal land ownership, particularly the question of whether this form of land tenure was a long-time indigenous institution that had to be respected and preserved, or, rather, a response to the pressures imposed on rural communities by the 1830–70 Cultivation System, which drove them to share responsibility for the onerous labour services demanded of them as in-kind taxation. Boomgaard (1989) has shown that the notion of communal land ownership was probably not widespread in Java before being imposed by colonial officials, and that actually individual land ownership was the norm in Java in the nineteenth century.

4 By then the convoluted qualitative outcomes of an extensive 1868–69 survey into local land rights—published in 1876 and 1880—had confirmed that communal ownership dominated (Kano 1977).

During 1897–1906, the government supported a trial of a new method to assess land tax liabilities in Priangan residency, where individual rights to farmland, rather than communal rights, dominated. As in other parts of Java, the registration of rural land rights in Priangan was imperfect, conflicts over land were rife, land grabbing was prevalent and regional law courts found it difficult to resolve issues impartially (Wolters 1998). The new system concentrated the services of available rural and urban surveyors, who adapted their surveying method to cover parcels of farmland comprising several individual farm plots. Local officials from the Department of Home Affairs then classified these parcels for the purpose of assessing land tax liabilities.

REFORM OF THE LAND TAX REGISTRATION SYSTEM AS A SUBSTITUTE FOR A RURAL CADASTRE

The trial in Priangan was the basis for an overhaul of the system of land tax assessment in 1907. The new system was phased in during 1908–20 in other residencies in Java, including the principalities of Yogyakarta and Solo. It provided for the surveying of both irrigated and upland farm areas; it improved and systematised the village-based land registers; and it provided a better basis for the assessment of land tax liabilities through monthly recording of the harvested area of different crops, based on crop cuttings to assess crop yields.

The new system centred on the creation of a village-based, 1:5,000 land tax map (*landrentekaart*) and an improved and more systematically compiled and maintained village land tax register (*landrenteregister*) (Departemen Dalam Negeri 1919; Teng 1933: 56–71). Both served a fiscal purpose and did not record or certify individual landholdings. Nevertheless, the map identified the location and size of each parcel of land comprising individual farm plots, and the register contained the names of the farmers who operated the plots and paid the land tax.

Professional surveyors of the new 'land tax brigades' of the Topographical Service (Topografische Dienst) conducted the measurement of land parcels in a cumulative fashion, one subdistrict (*kecamatan*) after another. For practical purposes, a parcel was defined as a complex of taxable village lands. It covered several individual farm plots that had natural boundaries, natural common characteristics and a common crop-yielding capacity on which the land tax could be based. The maximum size of a parcel was 15 hectares for irrigated land and 35 hectares for an upland area. Within each parcel, village officials calculated the approximate areas of the individual plots of farmland, with the involvement of the landholders. Hence, the land tax was now assessed individually,

although not with the level of detail and security of a cadastral system. The system was regarded as providing an acceptable compromise between accuracy, cost and fairness (Huender and Meijer Ranneft 1926: 30 and 44–5).

After surveyors had mapped village land, the land classification personnel of the Land Tax Service (Dienst der Landrente) of the Department of Finance created the village land tax registers. The names of the owners of each parcel and plot of land were recorded in these registers. Landholders effectively relied on this record, on mutual agreement and on physical markers such as ditches, trees or hedges to confirm the boundaries of their individual plots of land. The village land tax registers were checked regularly by taxation officials. As surveying of taxable land was relatively costly, remeasurement to account for changes in land use, such as conversion to roads or housing, was done in a 10-year cycle. Changes in land ownership due to sale, inheritance or donation were also recorded in the village registers, and passed up the administrative chain to be recorded in duplicate registers held at an office for agrarian affairs in each residency and at the Department of Finance in Batavia (Jaarsma 1918: 66–7).

By 1920, when fully implemented across Java, the land tax registration system offered a highly accurate estimate of total farmland and a more objective basis to establish land tax liabilities. During 1920–40, the land tax was on average 4 per cent of value added in farm agriculture, contributing just 5 per cent to the government budget (Van der Eng 2006). The system started to serve as a substitute cadastre, even though it had not been designed for that purpose. A farmer's receipt (*girik* or *petuk*) for the annual payment of land tax was documented proof of indicative ownership. After land sales, new owners were eager to get their names and the approximate sizes of their plots recorded in the village land tax registers (Harsono 1973: 5).

The system yielded comprehensive data on rural land transactions in Java, revealing active land markets. During 1922–40, 12–22 per cent of landholders registered for land tax were involved in transactions each year, and 4–8 per cent of the registered land plots changed hands every year through sale, inheritance or donation (CKS 1922–40). Around 1 per cent of land plots were used as collateral for mortgages, but collateral registration was not compulsory. The record therefore excludes informal credit arrangements, which may have been more significant (Wolters 1998: 305–8).

Surveying of farmland for land tax purposes was gradually extended beyond Java, first to Bali in 1917, then to Lombok, Southeast Kalimantan, Southeast and South Sulawesi, and Sumbawa in the 1920s and 1930s (Teng 1933: 21–6). The system was incompatible with the shifting culti-

vation practised in the outer islands, so the existence of sedentary farm agriculture was a prerequisite for its introduction. In the 1930s the surveying of farmland was extended to West Sumatra and Tapanuli, with plans to introduce the land tax there by 1940.

In 1913, the government ordered the drafting of an ordinance to convert the land surveys and plot registration for land tax purposes into a rural cadastre (Inlandsch Kadaster 1914). Advocates argued that this was the only way to end malversation with farmland, and also that security of land title would facilitate transparent land markets and allow farmers to capitalise on land (Jaarsma 1918: 82–93; Raeven 1923–24). The government was hesitant because of the high cost of plot surveying and certification. The Topographical Service experimented in 1922–23 with possible ways to organise a fee-for-service rural cadastre, but concluded that the costs would be prohibitive for most landholders.[5] In addition, the existence of unidentified customary land-tenure regulations caused the government to hesitate about introducing a cadastral system to define individual land titles, even though the share of farmland under communal ownership was decreasing, and would fall to 18 per cent in 1932 (CKS 1940: 262–3). For cost reasons, the government decided in 1925 not to proceed with changing the land tax system into a rural cadastre.

Underlining the fact of legal plurality, the Agrarian Law did not apply to most self-governing territories (*swapraja*). Until their abolition in 1957, these territories defined and administered rights to land in a variety of different ways. For example, Surakarta and Yogyakarta had their own cadastral systems, while Aceh, North Sumatra and Riau copied the land tenure arrangements in Malaya, where sultans extended freehold 'grants' to residents, administered by a registration office (Deelman 1926).

THE ABOLITION OF THE LAND TAX, THE 1960 AGRARIAN LAW AND THE DIFFICULTIES OF LAND REFORM

During the Japanese occupation (1942–45), the system of land taxation remained largely unchanged. The cadastral work for the land tax registers and the cadastral services for urban areas were merged into the

5 The Topographical Service measured individual land plots in several parts of Java, and offered maps of those plots to the rural landholders at 1.5 Dutch guilders per plot (Topografische Dienst 1923). It measured 121,222 plots and sold plot maps to 66 per cent of the landholders. But most landholders were not interested in participating. The disappointing outcome was due to the cost involved; obstruction by local officials who feared they would be deprived of income from maintaining the land tax registers; and the fact that the individual plots were not registered, only measured and mapped (Raeven 1923–24: 87–9).

new Land Registry Service (Jawatan Pendaftaran Tanah) in the Department of Justice. Anecdotal evidence suggests that in many villages the quality of cadastral record keeping deteriorated, as registers were no longer updated. During the revolution period (1945–49), land tax registers were destroyed in several villages. Copies of the land tax maps kept in Jakarta were all destroyed shortly after August 1945 by fervent Indonesian nationalists. In the late 1940s the colonial government started to reconstruct the missing records on the basis of records held at regencies and residencies, but the Indonesian government abolished the land tax in 1951 and this work ceased.

During the 1950s, several committees worked on designing new agrarian legislation that would meet the principles of the new constitution and address problems of increasing landlessness and poverty in Java. Initially, the terms of reference for these committees included the introduction of a modern system of land tenure that would end the pluralism of the colonial period, emphasise strong individual property rights and introduce a comprehensive cadastre and a uniform land registration system (Harsono 2005: 125–6). Other developments also affected the way the law shaped up. For example, legislation in 1954 effectively ended the long-term rural land tenure of private enterprises by declaring that the occupation of their land by squatters was no longer a violation of the law.

The significance of resolving agrarian issues was underlined by the fact that there was a minister of agrarian affairs during 1951–67. Nevertheless, the Office for Agrarian Affairs (Kantor Urusan Agraria), which assisted with agrarian policy-making, was located in the Ministry of Home Affairs, and the Land Registry Service remained part of the Ministry of Justice. They were merged in 1957 into the Ministry of Agrarian Affairs (Departemen Agraria), tasked with preparing the implementation of the new agrarian law and subsequent land reforms.

Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) unified land tenure. Article 21 stated that only Indonesian citizens had the right of land ownership (*hak milik*), and article 42 that foreign nationals had the right of land use (*hak pakai*). This was in the context of article 33(3) in the 1945 Constitution of the Republic of Indonesia, which specified that the 'land, water and the natural resources contained within them are to be controlled by the State and used for the greatest possible prosperity of the people'. Article 19 of the Basic Agrarian Law stipulated the introduction of a cadastral system to register ownership of all land plots, while article 17 mentioned maximum landholdings, thus underscoring that the cadastral system would serve the purpose of land redistribution (Gautama and Harsono 1972: 21–4). The law's preamble stated that the law was based on *adat*, with further clauses declaring that customary regulations remained valid where they did not contradict other

articles. It is possible that the law intended customary arrangements of land ownership to gradually adapt to the details of the Basic Agrarian Law, leading eventually to a uniform land ownership regime (Gautama and Harsono 1972: 97–100).

With the land tax abolished in 1951 and in the absence of a rural cadastre, relatively informal ways of confirming land titles, including land tax receipts, continued to serve as documentation in transactions involving land, such as mortgaging (Harsono 1973: 5–6). It is difficult to know how many of the pre-war land tax registers had survived the turbulent 1940s. Where they did, village authorities may have continued to use them after 1951. One reason was that an agricultural income tax for larger landholders had replaced the land tax. Local authorities collected this tax on the basis of land tax assessments and continued to do so after it became an agricultural production tax in 1959 (Booth 1974: 59). In addition, the land tax registers were related to the system used to determine how farmland was being used and to measure farm crop production. For example, the rice crop cuttings used to determine farmers' annual land tax liabilities were also used to estimate rice production. Hence, the central bureau of statistics relied on the land tax data for information on the stock of farmland. Even though the Ministry of Finance no longer had responsibility for the regular checking of village land tax registers after 1951, these data informed decision-making related to the Basic Agrarian Law (Sadjarwo 1961).

The implementing regulations for the Basic Agrarian Law specified that each village was to have a land register (*buku tanah*) containing details of individual landholdings and landholders, as well as changes in such details (Gautama and Harsono 1972: 93–4; Harsono 1973: 9–16). This was similar to the land tax register, but this time the register recorded individual land plots. Registered landholders were expected to receive land certificates (*sertifikat tanah*) from the local Land Registration Office (Kantor Pendaftaran Tanah, since 1988 Kantor Pertanahan), to be based on professionally surveyed and recorded landholdings. The instructions for the establishment and maintenance of the land register took no account of other forms of landholding apart from individual ownership, despite the Basic Agrarian Law's references to *adat*.

A 1960 government regulation defined maximum rural landholdings in general terms, and a 1961 instruction from the Ministry of Agrarian Affairs refined them by regency on the basis of rough indications of regional population density. In the absence of a fully-fledged rural cadastre, the instructions left the identification of surplus or absentee farmland for redistribution to subdistrict land reform committees (Morad 1970: 8–18; Harsono 1973: 12–13). Most likely these committees used data from the often-outdated land tax registers, because they were the only availa-

ble records of rural landholdings. The lack of reliable and comprehensive data on land ownership was one of the reasons why the land reforms of the 1960s proved relatively marginal and unable to stem landlessness in Java (Van der Eng 1996: 148–50).

The surveying of individual land plots by the Land Registry Service and the introduction of subdistrict Land Registration Offices, as decreed by the Basic Agrarian Law and its implementing regulations, remained piecemeal. One reason was that the required labour and skills, as well as sufficient financial resources to recruit, train and employ enough workers to establish and maintain a cadastre, remained limited. In addition, rural land registration was voluntary and done on a fee-for-service basis. During 1961–89, the registration offices issued about 11 million land certificates (Risnarto 2009: 48). This compares to about 26 million land plots recorded in the village registers in 1957 (Sadjarwo 1961: 12–13). The registration offices mainly registered land for official purposes—to facilitate transmigration projects, for example, or to provide subsidised registration for poor landholders under the National Land Registration Project (Proyek Operasi Nasional Agraria, PRONA) introduced in 1981. Farmers were reluctant to use their services because the registration fees were relatively high and the registration process cumbersome and lengthy, while the village land registers still sufficed as proof of ownership in many regions (Harsono 1973: 19–20).

Most land transactions were not recorded at the subdistrict Land Registration Office, but continued to be conducted in front of witnesses, particularly the village head, and secured with a change of names in the village land register. Charras et al. (1993: 218–20) conceptualised a 'hierarchy of tenure security' comprising (from most to least authoritative):

1 the land certificate (*sertifikat tanah*);
2 a land clarification letter (*surat keterangan tanah*, SKT) from the village head, and confirmed by the subdistrict head (*camat*) or subdistrict agrarian officer, identifying the land plot;
3 a certificate issued by the village head stating that the plot is within his administrative jurisdiction;
4 a record of a past transaction (*akte jual beli* or *surat segel*) involving the land plot, confirmed by a notary and signed by seller, buyer and witnesses; and
5 verbal agreements and common knowledge.

REVIVAL AND EXPANSION OF THE RURAL TAX REGISTERS

In 1965 the government sought to increase public revenue by consolidating several property taxes into a local development contribution (*iuran*

pembangunan daerah, IPEDA). In rural areas, the IPEDA tax continued the 1959 agricultural production tax; initially it was based on the village land tax registers to the extent that these still existed. In urban areas, IPEDA replaced the real estate tax (Booth 1974: 59–62).

IPEDA triggered a restart of the surveying of farmland to update and re-establish rural tax registers, and extend them to areas where the land tax had not been introduced before being abolished in 1951 (McCawley 1972: 28; Booth 1974: 63–6). Although landholders seem to have been eager to pay IPEDA and thus secure a tax receipt that would confirm their landholding, the property information on which the tax was based remained out of date and incomplete. Staffing and budget constraints caused quality discrepancies in the data used to establish tax liabilities (Kelly 1993: 86).

Following tax reform in 1983, the land and building tax (*pajak bumi dan bangunan*, PBB) replaced the IPEDA tax in 1986 (Kelly 1993; Rosengard 1998: 122–35). PBB tax liability assessments were expected to be based on the cadastral system. However, the land cadastre was still incomplete, causing the Directorate-General of Taxation in the Ministry of Finance to use its regional offices to create its own database. The ministry's property tax information system (Sistem Manajemen Informasi Objek Pajak) was launched in 1991, and by the mid-1990s contained records of 78 million properties (Kelly 2004: 121–2). This fiscal cadastre was entirely separate from the land cadastre. It recorded taxpayer details, land and building locations, the value of properties and the tax liabilities of owners. The comprehensiveness of the fiscal cadastre was a reason for many property owners to persist in using property tax receipts as proof of indicative ownership (Fitzpatrick 1997: 196; Kelly 2004: 126–7; Castañeda Dower and Potamites 2014: 444).

A review of cadastre and PBB records showed that just 12 million of the nation's 54 million rural land plots had been surveyed and registered in 1992 (World Bank 1994: 36). At the same time, the number of plots was growing by 1 million per year due to changes in ownership and the accelerated expansion of agricultural land, particularly in Sumatra and Kalimantan through the clearing of forests. Nationally, 20 per cent of registrable land had been registered under the Basic Agrarian Law, but for rural areas the average was just 10 per cent (Fitzpatrick 1997: 173).

Other developments also complicated matters. The accumulation of some 2,000 land-related laws and central and regional regulations had made land transactions and land registration even more complex and less transparent, sometimes resulting in contested land transactions, as the huge number of items in the Indonesian news media indicates. Documented evidence of rights to land dating back to 1960 was often imperfectly preserved, while newly deforested land areas had not yet

been surveyed and the lower rungs of the 'hierarchy of tenure security' had yet to materialise.

The Directorate-General of Agrarian Affairs in the Ministry of Home Affairs was responsible for overseeing the accumulation of agrarian issues during the 1970s and 1980s. Formed after the Ministry of Agrarian Affairs was disbanded in 1967, it was tasked with implementing the Basic Agrarian Law and providing cadastral services. But it had limited resources. This changed when a 1988 presidential decree converted it into the semi-autonomous National Land Agency (Badan Pertanahan Nasional, BPN), which reported directly to the president.

BPN AND THE LAND ADMINISTRATION PROJECT, 1994–2009

The establishment of BPN indicated that the government was according policy priority to the registration of rural land titles. With the support of the World Bank and the Australian Agency for International Development (AusAID), BPN developed the large Land Administration Project (Proyek Administrasi Pertanahan) aimed at improving land titling in rural Indonesia (Warren and Lucas 2013). The project was scheduled for implementation in two phases, with the first phase in 1994–99 to focus on Java, and the second, spread over four five-year periods in 2000–19, to focus on the outer islands.

The purpose of the Land Administration Project was to redesign and improve land administration and land management. The project was firmly based on the notion that accurate land titles were a key requirement for economic development. They were expected to assist in the verification of legal rights by individuals and institutions and thus facilitate a quick and flexible accommodation of changes in land use in response to market signals. Secure land titles would also allow owners to mobilise financial resources through collateral arrangements. By offering the owners and operators of land greater security of tenure, land titles would provide more incentives to invest in land, leading to greater productivity. BPN expected that by 2019 it would have achieved close to 100 per cent registration of the estimated stock of land plots in non-forested areas.

In all, BPN registered 1.9 million land titles during 1994–2001, or 270,000 per year, as part of the Land Administration Project (World Bank 2002: 14). A further 2.4 million land titles, or 480,000 per year, were registered during 2005–09 under a follow-up project (World Bank 2014a: 32). BPN leveraged the experience it had gained through the project to continue its surveying work independently of the World Bank. In total, it stepped up the registration of land plots and issuance of land titles to an annual average of 3.3 million during 2005–08, of which 62 per cent were

owner-initiated and 38 per cent due to the implementation of government programs (BPN 2009: 13).[6] Innovations such as the use of online plot recording and registration since 2006, and of a mobile land certification service to reach remote areas, have allowed BPN to increase the registration rate. Nevertheless, problems with BPN service delivery remain. They include operational issues such as a shortage of experienced surveyors, the limited infrastructure that surveyors and land office staff have to work with and the poor cooperation between government agencies in relation to land issues (Koespramoedyo et al. 2013).

The World Bank discontinued its support for the Land Administration Project in 2009 because results remained below expectations. In 2013, BPN reported that 27.5 million land certificates had been issued and recorded. This was a significant increase from 12 million in 1992, but it was still just one-third of the total number of urban and rural land plots, which had increased to an estimated 85 million (World Bank 2014b: 241). The main reason for the lag in registrations was the accelerated expansion of the rural land frontier in the outer islands. Unlike Java, where the frontier for agricultural production had been reached long ago, outside Java the area of land used for agricultural production had increased from 19 million hectares in 1980 to 30 million hectares in 1995 and to about 47 million hectares in 2014 (Van der Eng 1996: 280–88, updated with BPS data).

The increase in the number of certified land titles has had the expected effects of opening up land markets in rural areas and improving farm productivity (Risnarto 2009: 50–56; Stacey 2011; Grimm and Klasen 2015). On the other hand, the numbers of disputes about land have multiplied (Lucas and Warren 2013: 9–11). A major reason is that the more complete cadastral coverage has not been attuned to accommodating customary land rights. While the Basic Agrarian Law acknowledged such rights, few individuals or communities actually sought to have their customary land rights recognised during the 1960s to 1980s so that those rights could be adapted to the detail of the law. Customary rights to land have largely been ignored, and public authorities have increasingly used the 'national interest' principle in article 21 the Basic Agrarian Law to override those rights. However, such decisions have not remained unchallenged, particularly since 1998. The plurality of land rights has therefore become an ongoing source of disagreement and conflict, as Fitzpatrick (1997), Daryono (2010) and the authors of other chapters in this book make clear.

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6 Data on the completeness of the cadastral system are not readily available. BPN's website (www.bpn.go.id/Publikasi/Data-Pertanahan/) offers an interactive map showing the geographical location of registered plots and promising tabulated data, but links to quantitative data are void.

CONCLUSION

The magnitude of the task of registering rural landholdings in Indonesia has increased enormously during the 200 years since 1813. Nevertheless, it appears that three threads have remained the same. The high cost of the required administrative effort continues to frustrate the establishment of a comprehensive cadastral system in rural areas. The low-cost alternative, in the form of the systems used to assess and levy land and property taxes in rural areas, continues to be seen and accepted as a substitute for formal cadastral services. And public authorities continue to be confounded by the existence of land tenure regulated by customary rights and how to accommodate those rights in the context of the existing agrarian legislation.

At least three factors complicate the resolution of land issues. First, there is a plethora of legal documents pertaining to land laws and regulations, many of them overlapping and contradictory (Winoto 2010: 14). Work has been under way to improve this legal framework, with the intention of creating a new agrarian law, but there is currently no indication that this process will be completed soon. Second, since 1999 the concepts of customary (*adat*) regulations and the right to self-determination (*hak ulayat*) have been enshrined in various items of legislation. But without identification and recognition of the many forms of customary land rights outside the cadastral system, as well as effective principles to protect them, it will remain hard for the legal system to resolve the large number of land disputes in Indonesia. Third, despite the push by BPN, a range of operational matters continue to stand in the way of effective land registration in rural areas.

To overcome these issues in the short term, it may be practicable to focus on the last one. The downside of BPN's land registration push is that further improvements are likely to require a greater commitment of public funds, given that vast areas of agricultural land are still unsurveyed. A possible alternative with lower cost implications is to consider what can be done to enhance the informal ways in which many Indonesian landholders still articulate their rights to land through alternatives to formal certification. This could include the coordination, or possibly even integration, of the land cadastre and the property tax register, as Aisiyah and Erawanta (2010) and others have suggested.

REFERENCES

Aisiyah, N. and T.T. Erawanta (2010) 'Sistem informasi pertanahan sebagai alat untuk pengembangan' [Land information system as a tool for development], *Magistra*, 22(72): 1–10.

Boomgaard, P. (1989) *Between Sovereign Domain and Servile Tenure: The Development of Rights to Land in Java, 1780–1870*, Free University Press, Amsterdam.

Booth, A. (1974) 'IPEDA: Indonesia's land tax', *Bulletin of Indonesian Economic Studies*, 10(1): 55–81.

BPN (Badan Pertanahan Nasional) (2009) *Rencana Strategis BPN RI Tahun 2010–2014* [BPN Strategic Plan 2010–2014], National Land Agency (BPN), Jakarta.

BPS (Badan Pusat Statistik) (various years) *Luas Lahan Menurut Pengunaanya di Indonesia* [Land Area according to Its Use in Indonesia], Statistics Indonesia (BPS), Jakarta.

Castañeda Dower, P. and E. Potamites (2014) 'Signalling creditworthiness: land titles, banking practices and formal credit in Indonesia', *Bulletin of Indonesian Economic Studies*, 50(3): 435–59.

Charras, M. et al. (1993) 'Socio-economic integration', in M. Charras and M. Pain (eds) *Spontaneous Settlements in Indonesia: Agricultural Pioneers in Southern Sumatra*, ORSTOM-CNRS, Paris: 211–48.

CKS (Centraal Kantoor voor de Statistiek) (1922–40) *Statistisch Jaaroverzicht voor Nederlandsch-Indië* [Statistical Yearbook of the Netherlands Indies], continued as *Indisch Verslag* [Annual Report of the Netherlands Indies], Central Statistical Office (CKS), Batavia.

Colombijn, F. (2014) *Under Construction: The Politics of Urban Space and Housing during the Decolonization of Indonesia, 1930–1960*, KITLV Press, Leiden.

Daryono (2010) 'The transformation of land law in Indonesia: the persistence of pluralism', *Asian Journal of Comparative Law*, 5(1): 1–32.

Deelman, A.G. (1926) 'Een Atjehsch kadaster' [A cadastre in Aceh], *Koloniaal Tijdschrift*, 15(1): 516–19.

Departemen Dalam Negeri (1919) 'Padjak-tanah dan padjak-empang di tanah Djawa dan Madoera' [Land tax and tax on fish ponds in Java and Madura], in *Pemimpin oentoek Prijaji-Prijaji Boemipoetera ditanah Djawa dan Madoera, No. 9/B.B* [Manual for Indonesian Public Servants in Java and Madura, No. 9/B.B], Departemen Pemerintahan dalam Negeri, Batavia.

Fitzpatrick, D. (1997) 'Disputes and pluralism in modern Indonesian land law', *Yale Journal of International Law*, 22: 171–212.

Fitzpatrick, D. (2007) 'Land, custom, and the state in post-Suharto Indonesia: a foreign lawyer's perspective', in J.S. Davidson and D. Henley (eds) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Routledge, London and New York, NY: 130–48.

Gautama, S. and B. Harsono (1972) *Survey of Indonesian Economic Law*, Lembaga Penelitian Hukum dan Kriminologi, Universitas Padjadjaran, Bandung.

Goh, T. (1986) 'Review of the nineteenth and early twentieth century debate on the origin of communal landownership with special reference to Java', *Masyarakat Indonesia*, 13(3): 243–76.

Grimm, M. and S. Klasen (2015) 'Migration pressure, tenure security, and agricultural intensification: evidence from Indonesia', *Land Economics*, 93(3): 411–34.

Harsono, B. (1973) *Land Registration in Indonesia Today*, Fakultas Hukum, Universitas Padjadjaran, Bandung.

Harsono, B. (2005) *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya* [Indonesian Agrarian Law: The History

of the Formation of the Basic Agrarian Law, Its Content and Its Implementation], Djambatan, Jakarta.
Huender, W. and J.W. Meijer Ranneft (1926) *Onderzoek naar den Belastingdruk op de Inlandsche Bevolking* [Investigation into the Tax Burden on the Indigenous Population], Landsdrukkerij, Jakarta.
Hugenholtz, W.R. (1994) 'The land rent question and its solution 1850–1920', in R. Cribb (ed.) *The Late Colonial State in Indonesia: Political and Economic Foundations of the Netherlands Indies 1880–1942*, KITLV Press, Leiden: 139–72.
Inlandsch Kadaster (1914) *Voorloopig Ontwerp eener Ordonnantie to Instelling van een Inlandsch Kadaster* [Provisional Design of an Ordinance to Establish a Rural Cadastre], Landsdrukkerij, Batavia.
Jaarsma, S. (1918) *Bewijsmiddelen van Recht op Grond in Nederlandsch-Indie* [Proof of Rights to Land in the Netherlands Indies], Eduard Ijdo, Leiden.
Kano, H. (1977) 'Land tenure and the *desa* community in nineteenth century Java', Institute of Developing Economies Special Paper No. 5, Institute of Developing Economies (IDE), Tokyo.
Kelly, R. (1993) 'Property tax reform in Indonesia: applying a collection-led implementation strategy', *Bulletin of Indonesian Economic Studies*, 29(1): 85–104.
Kelly, R. (2004) 'Property taxation in Indonesia', in R.M. Bird and N.E. Slack (eds) *International Handbook of Land and Property Taxation*, Edward Elgar, Cheltenham: 117–28.
Koespramoedyo, D. et al. (2013) *Kajian Evaluasi Strategi Sertifikasi Tanah di Indonesia* [Evaluative Assessment of the Land Certification Strategy in Indonesia], National Development Planning Agency (Bappenas), Jakarta.
Koloniaal Verslag (1883) 'Koloniaal verslag van 1883: bijlage P' [Colonial report of 1883: appendix P], *Bijlagen bij de Handelingen der Staten Generaal 1883–1884* [Appendices to the Proceedings of the States General], The Hague.
Lindblad, J.T. (1989) 'Economic aspects of the Dutch expansion in Indonesia, 1870–1914', *Modern Asian Studies*, 23: 1–23.
Lucardie, G.R. (1880) 'Nota over landrente' [Note about land tax], *De Locomotief*, 20–21 August.
Lucas, A. and C. Warren (2013) 'The land, the law, and the people', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 1–41.
McCawley, P. (1972) 'Survey of recent developments', *Bulletin of Indonesian Economic Studies*, 8(3): 1–32.
Morad, A.A. (1970) 'Land reform: report to the government of Indonesia', Food and Agriculture Organization Report No. TA2875, Food and Agriculture Organization (FAO), Rome.
Raeven, J.H. (1923–24) 'Een inlandsch kadaster (een miljoenenkwestie)' [A native cadastre (an issue for millions)], *Tijdschrift voor het Kadaster in Nederlandsch-Indië*, 5: 37–101, 103–59; 6: 1–53.
Risnarto (2009) 'Impact of land certification on land market and small-scale landholders', in I.W. Rusastra, S.M. Pasaribu and Y. Yusdja (eds) *Prosiding Seminar Nasional. Land and Household Economy 1970–2005: Changing Road for Poverty Reduction*, Pusat Sosial Ekonomi dan Kebijakan Pertanian, Jakarta: 37–60.
Rosengard, J.K. (1998) *Property Tax Reform in Developing Countries*, Kluwer, Norwell.
Sadjarwo (1961) 'Pidato Menteri Agraria Mr Sadjarwo pada siding Dewan Pertimbangan Agung tgl. 13 Djanuari 1960' [Speech by the Minister of Agrarian Affairs Mr Sadjarwo to the Supreme Advisory Council on 13 January 1960],

in *Peraturan Dasar Pokok-Pokok Agraria dan Landreform* [Basic Regulation of Agrarian Issues and Land Reform], Departemen Penerangan, Jakarta: 9–25.
Stacey, D. (2011) 'Tenure insecurity, adverse selection, and liquidity in rural land markets', Queen's Economics Department Working Paper No. 1269, Queen's University, Kingston.
Teng, S.T. (1933) *De Landrente-Belasting* [The Land Tax], De Bannier, Rotterdam.
Topografische Dienst (1923) 'De registratie van het inlandsch grondbezit (kadaster–grondboekhouding)' [The registration of indigenous land ownership (land register–land bookkeeping)], in *Jaarverslag van den Topografischen Dienst in Nederlandsch-Indië over 1922* [Annual report of the Topographical Service of the Netherlands Indies], Topografische Inrichting, Batavia: 35–53.
Van der Eng, P. (1996) *Agricultural Growth in Indonesia: Productivity Change and Policy Impact since 1880*, St. Martin's Press, New York, NY.
Van der Eng, P. (2004) 'Ethical Policy', in K.G. Ooi (ed.) *Southeast Asia: A Historical Encyclopedia*, ABC-CLIO, Santa Barbara, CA: 489–92.
Van der Eng, P. (2006) 'Surplus mobilisation in farm agriculture: a comparison of Java and Japan, 1870–1940', *Bulletin of Indonesian Economic Studies*, 42(1): 35–58.
Van Dijk, K. (2005) 'The study of Islam and *adat* in Java', in H. Antlöv (ed.) *The Java That Never Was: Academic Theories and Political Practices*, LIT Verlag, Münster: 133–55.
Verstijnen, F. (1890) 'Iets over de verschillende rechtstoestanden, waardoor de grond op Java en Madoera beheerscht wordt' [Something about the various forms of land tenure that dominate in Java and Madura], *Tijdschrift voor het Kadaster en Landmeetkunde*, 6(6): 1–19.
Warren, C. and A. Lucas (2013) 'Indonesia's land titling program (LAP): the market solution?', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 93–113.
Winoto, J. (2010) 'Taking land policy and administration in Indonesia to the next stage', in K. Deininger et al. (eds) *Innovations in Land Rights Recognition, Administration and Governance*, World Bank, Washington, DC: 12–19.
Wolters, W.G. (1998) 'Land, property, and credit contracts in Priangan, West Java, 1870s through the 1920s: legal framework and private ordering', in R.C. Hunt and A. Gilman (eds) *Property in Economic Context*, University Press of America, Lanham, MD: 289–315.
World Bank (1994) 'Staff appraisal report, Indonesia: Land Administration Project', Report No. 12820-IND, World Bank, Washington, DC.
World Bank (2002) 'Implementation completion report […] on a loan in the amount of US$80 million to the government of Indonesia for a land administration project', Report No. 23684, World Bank, Washington, DC.
World Bank (2014a) 'Project performance assessment report: Indonesia. Land Management and Policy Development Project', Report No. 85809, World Bank, Washington, DC, 5 March.
World Bank (2014b) 'Towards Indonesian land reforms: challenges and opportunities. A review of the land sector (forest and non-forest) in Indonesia', World Bank, Washington DC.

11 Agrarian transformations and land reform in Indonesia

Jeff Neilson

The total number of Indonesian households involved in farming to support at least part of their livelihoods is substantial, and poverty rates have persistently been higher in rural than in urban areas. As a result, improved access to agricultural land is widely held to be essential to achieve poverty alleviation. Farm fragmentation is also believed to be widespread, contributing to ever-decreasing farm sizes that lock near-landless, marginal farm households (*petani gurem*) into a vicious poverty trap. This is the standard narrative supporting the necessity for a broad-ranging land reform program to ensure improved access to agricultural land for *petani gurem* and landless farmers. This chapter assesses the relationship between the land reform movement and contemporary agrarian transformations in Indonesia—that is, the changing role of agriculture and land in livelihood strategies. In light of these transformations, I examine the discursive, political and structural challenges affecting the capacity of President Joko Widodo's land reform program to support rural poverty alleviation in Indonesia.

The terms 'land reform' and 'agrarian reform' are sometimes used interchangeably, but there are differences between them. Land reform refers specifically to a change in the social institutions surrounding land ownership or access. Lipton (2009: 1) presents land reform as 'laws with the main goal of reducing poverty by substantially increasing the proportion of farmland controlled by the poor, and thereby their income, power or status'. Agrarian reform refers to a much broader 'multi-disciplined set of interrelated aims and means capable of combating the ills of the [unequal] agrarian structure' (Cohen 1978: 1). The means of achieving agrarian reform usually encompass some kind of redistributive land reform in addition to interventions such as improved agricultural extension, credit

availability, trade policies, pricing, and tenancy and wage regulations. In Indonesia (somewhat confusingly), the terms 'agrarian renewal' (*pembaruan agraria*) and 'agrarian reform' (*reforma agraria*) are in fact closely associated with land reform, and are widely used to suggest a progressive land agenda. *Pembaruan agraria* is legally defined (in MPR Decree IX/MPR/2001) as 'a sustained process of restructuring the control, ownership and exploitation of agrarian resources, undertaken to attain justice, prosperity, legal protection and certainty for all Indonesian people'.

Opportunities for the active participation of a resurgent peasant-based agrarian movement have emerged in post-authoritarian Indonesia. Peasant organisations with an activist orientation, such as the Indonesian Federation of Peasant Unions (Federasi Serikat Petani Indonesia, FSPI), the Indonesian Peasant Union (Serikat Petani Indonesia, SPI), the Sundanese Peasant Union (Serikat Petani Pasundan, SPP) and the Consortium for Agrarian Reform (Konsorsium Pembaruan Agraria, KPA), have actively sought to represent peasant interests in negotiations with the state, to lobby for agrarian reform and in some cases to orchestrate unilateral land occupations.[1] These organisations have emerged alongside New Order legacy farmer organisations such as the Indonesian Farmers Association (Himpunan Kerukunan Tani Indonesia, HKTI).[2]

The National Land Agency (Badan Pertanahan Nasional, BPN) is the pivotal agency within the apparatus of the state considered capable of enacting land reform. BPN (2015) identifies land—especially 'neglected land' (*tanah terlantar*)[3]—as the primary object of agrarian reform, and the rural (and sometimes urban) poor as potential subjects of land reform. Not unlike his immediate predecessors, Susilo Bambang Yudhoyono

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1 FSPI was formed in the mid-1990s as a loose federation of local and provincial-based peasant groups, including the large West Java-based group, SPP. In 2007 FSPI changed its terms of membership to become a national union, SPI. SPP chose to remain an independent organisation outside of SPI. KPA is not a member-based organisation, but was registered as a Jakarta-based NGO in 1995. It maintains close links with SPP (Peluso, Afiff and Rachman 2008). The use of the word 'peasant' in this chapter is intended to emphasise rhetorically the marginalised position of certain farmers.

2 Since 2004, the position of HKTI chair has been claimed by 2014 presidential candidate Prabowo Subianto, although a rival faction within HKTI disputes the legitimacy of this claim.

3 In a general sense, *tanah terlantar* refers to land that is not being used 'effectively'. It is closely associated with land held under leasehold arrangements (*hak guna usaha*, HGU), but which is not being used by the leaseholder for its intended purpose. In some instances, and controversially, the term may also be used for fallowed swiddens that the state erroneously considers to have been abandoned or underutilised by local communities.

and Megawati Sukarnoputri, President Widodo is publicly committed to undertaking land reform as a central pillar of his national development program. The stated aims of the current Indonesian government in implementing *reforma agraria* are diverse, and include reducing poverty; creating employment; improving access to economic assets such as land; addressing unequal access to land and other agrarian resources; reducing land-related conflicts; improving environmental quality; and increasing energy and food security (BPN 2015). The ambition to achieve these sometimes conflicting aims through any monolithic land reform program presents an ongoing and unresolved challenge for the state.

Despite being sympathetic to the land reform movement, the contributions to a book by Lucas and Warren (2013) present a mostly bleak portrait of how a fractured movement has struggled to deal effectively with critical land issues over the last 15 years. The prevailing explanations for this ineffectiveness can be categorised into four main lines of argument. First, there is a legal explanation, whereby an inadequate legislative framework is identified as a primary constraint (Bullinger and Haug 2012). Indeed, it is often remarked that current Indonesian land laws are characterised by considerable inherent ambiguity (Bakker and Moniaga 2010), although Bedner (Chapter 3, this volume) suggests that a unified system of land law is unlikely to substantially address land inequities. Second, a bureaucratic explanation identifies institutional ineptness, limited interdepartmental coordination, the challenges of regional autonomy and poor implementation as key causes (Rachman 2011; KPA 2014; Nurdin 2014). At the heart of this bureaucratic explanation, argue Bakker and Moniaga (2010: 200), is the 'tenacious struggle [between the Ministry of Forestry and BPN] regarding authority over land, which regularly places them on opposite sides of local land conflict'.[4] Third, we can identify political explanations, whereby vested interests, corruption and patronage reinforce patterns of rent seeking and exploitative behaviour that systematically work against the interests of small farmers. Under this explanation, unequal power relationships would be expected to persist and shape land access regimes irrespective of any legal or bureaucratic reforms. Finally, there are explanations that emphasise ideological factors as underpinning the failure of land reform, as presented by various authors in Lucas and Warren (2013). Neoliberal attitudes towards land and the surrender of land regulation to market mechanisms, it is

4 Bakker and Moniaga (2010) argue that this tension actually creates temporary spaces for land reform advocates to circumvent government agencies, and that these are frequently exploited at the local level by farmers and peasant groups. Such opportunities may be less secure in the long term, however, as they remain susceptible to volatile political configurations.

argued, prioritise the productive value of land over its social values, and inevitably give power over land to those with the capital to exploit it.

While each of these four lines of explanation has considerable merit, the aim of this chapter is to offer a further, and I would argue more fundamental, explanation for the limited capacity of a land reform program to deliver its stated aims of poverty alleviation. The chapter identifies an underlying set of structural and discursive tensions within land reform programs and the broader peasant movement, and argues that both the government and the movement itself consistently misdiagnose the unfolding agrarian transformations occurring across contemporary Indonesia.

LAND REFORM IN ITS HISTORICAL CONTEXT

The prominence of land reform in Indonesia has ebbed and flowed in the national consciousness since independence. Lucas and Warren (2013: 2) remind us that 'at every significant juncture in Indonesia's recent history, land issues have played a pivotal role'. Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law), with its commitment to the 'social function of land', was introduced only a few years after the large-scale nationalisation of Dutch assets in December 1957, which transferred vast areas of land under privately held estate plantations to state-owned plantation companies (Mackie 1961). The rapidly growing Indonesian Communist Party (Partai Komunis Indonesia, PKI) had held the first National Peasants Conference in early 1959, advocating redistributive land reform targeting 'foreign imperialists' and 'traitor-landlords' (Mortimer 1972). The Basic Agrarian Law was closely associated with progressive social policies that sought to advantage the land-poor and landless farmers of Indonesia. Attempts to revise it ever since have been politically fraught for this reason.

In the heady times of the 1960s, class-based analyses informed popular demands for land redistribution from the landlord classes (one of the 'seven village devils' who sucked the blood of the peasants, according to PKI) to small peasants and the landless (Rachman 2011; White 2015).[5] The latter were organised primarily through the PKI-affiliated peasant organisation, the Indonesian Peasants Front (Barisan Tani Indonesia, BTI). The Basic Agrarian Law introduced various land ownership ceil-

5 At the 1959 National Peasants Conference, the seven village devils were identified as being landlords, usurers, advance purchasers of crops, middlemen, bureaucratic capitalists, village bandits (thugs) and evil village officials (White 2015: 9).

ings, including a limit of 5 hectares for irrigated rice fields (*sawah*) in densely populated regions, and required any holdings above these limits to be forfeited to the state for redistribution. The reforms encountered numerous practical challenges and strong institutional resistance, and relatively little progress was made by the state committees for redistribution from 1960 to 1963. In late 1963 and throughout 1964, BTI launched a militant rural offensive, known as 'unilateral action' (*aksi sepihak*), aimed at implementing (as it argued) the provisions intended by the law but which state institutions had been unable or unwilling to carry out (Mortimer 1972). The action involved instances of peasant-led occupation of landholdings that exceeded the stipulated land ceilings. *Aksi sepihak* coincided with a severe economic crisis and hyperinflation, inducing a rush out of cash into land by local elites, and making conflict with BTI inevitable (Anderson 1983). According to Mortimer (1972), *aksi sepihak* had already lost momentum towards the end of 1964, as landholding elites were reasserting control over their assets well before the communist killings commenced in late 1965. The violent peasant suppression that followed, however, would cast a long shadow over the peasant movement during the 'long silence' of the New Order (White 2015).

The implementing laws to the Basic Agrarian Law also introduced the problematic notion of a minimum landholding size of 2 hectares, considered to be the smallest area required to maintain an acceptable agricultural livelihood in Indonesia. Despite never having any practical utility in Java, where high population-to-land ratios made this an impossibility, it has remained an aspirational ideal that has influenced the design of land distribution programs ever since. For example, the current government's land reform program (discussed below) has determined that exactly 4.5 million households would benefit from the allocation of 9 million hectares of land. Contrary to frequent claims within Indonesia, however, the country is not particularly rich in agricultural land relative to population. The total area covered by agriculture across Indonesia (including large estates) is estimated at around 56 million hectares (World Bank 2015), which equates to only 0.92 hectares per Indonesian household on average.[6]

A feature of land-based politics during Suharto's New Order was the state's willingness to interpret the national interest provisions of the Basic Agrarian Law as inclusive of large-scale commercial investment in

6 This compares to ratios of 1.05 in Thailand, 1.24 in Malaysia and 1.28 in China. An alternative measure might be total agricultural land per head of the rural population, where again Indonesia is relatively land-poor, with 0.47 hectares per rural individual. Equivalent measures are 0.56 in Thailand, 0.98 in Malaysia and 0.79 in China (World Bank 2015). The situation in Java is, of course, even more pronounced.

logging, plantations, mining, infrastructure and urban residential developments, often to the detriment of local communities (Rachman 2011). The land reform movement emerged anew in relative secrecy during the late years of the New Order, in response to dispossession instigated by these large-scale land allocations. Throughout the early 1990s, coalitions of student organisations, NGOs and agrarian activists worked underground to organise dispossessed peasants outside the major cities in Java and Sumatra and 'began to break the stranglehold of the state' (Peluso, Afiff and Rachman 2008: 382). This was important, as the focus of the movement became the injustices of institutionalised dispossession and unjust expropriation rather than class-based inequities.

The fall of Suharto in 1998 dramatically changed the way the land reform movement operated, facilitating the emergence of new forms of agrarian organisation and the ability to publicly debate land politics (Lucas and Warren 2003; Afiff et al. 2005). However, Bachriadi, Lucas and Warren (2013: 311) argue that the nascent peasant movement 'did not have the opportunity to develop a long-term set of principles toward broader reform of agrarian policies, [but] tended to read "land reform" as […] recognition of their rights of occupation and ownership'. This appears to have negatively affected the movement's ability to maintain an effective narrative for reform.

During the turbulent years of 1998 and 1999, peasant groups launched land occupations over land controlled by the State Forestry Corporation (Perum Perhutani), various state-owned plantation companies and private concessions (*hak guna usaha*, HGU),[7] mostly across Java and Sumatra (Rachman 2011). The Ministry of Forestry estimated that, by 2000, 119,000 hectares of state land and 48,000 hectares of private estates had been seized by peasants (Peluso, Afiff and Rachman 2008). These land occupations have continued over the last decade, with SPI (2015) claiming to have reclaimed 200,000 hectares of land during the period 2007–14. These actions resemble the *aksi sepihak* of the 1960s, but with corporate and state land rather than local landlords as the target. KPA claims that such 'land reform by leverage' is part of an organised mass movement, born out of training and workshops that the organisation has initiated (KPA representative, personal communication). This strategy contrasts with 'land reform by grace', as disparagingly described by KPA founder Gunawan Wiradi, which involves state-sanctioned redistribution (Rachman 2011).

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7 The land cultivation right (HGU) is a commercial lease over land issued by BPN, usually for periods of 25 or 30 years, and usually for the purpose of establishing large-scale estate-crop plantations of oil palm, rubber, tea, coffee and cocoa.

Table 11.1 Number of agrarian conflicts in Indonesia and area affected, 2013 and 2014

Cause of conflict	2013	2014	Area affected in 2014 (thousand ha)
1 Infrastructure development	105	215	74.41
2 Plantation expansion	180	185	924.74
3 Forestry related	31	27	271.54
4 Agriculture related	–	20	23.94
5 Mining	38	14	6.95
6 Coastal fisheries	9	7	1,548.15
7 Other	6	4	11.24
Total	**369**	**472**	**2,860.98**

Source: KPA (2013, 2014).

New land conflicts continue to occur across Indonesia. KPA collects and publishes annual data on 'agrarian conflict', which it defines specifically as structural conflicts involving large numbers of individuals, and caused by policies or decisions formulated, or supported, by the state. It therefore excludes land disputes involving individuals. KPA (2014) claims that there were 472 cases of agrarian conflict across Indonesia in 2014, affecting 2.9 million hectares of land (Table 11.1). These conflict zones were marked by repeated acts of violence, enacted by the police, private security guards and local thugs. KPA (2014) estimates that land-related conflicts affected 105,000 households and resulted in 19 deaths across Indonesia in 2014.

Agrarian reform was placed on the national political agenda in 2001, through a parliamentary decree on agrarian reform and the management of natural resources (MPR Decree IX/MPR/2001).[8] This decree was significant in that it required a revitalisation of the long-abandoned land reform agenda following the enactment of the Basic Agrarian Law, while recognising customary (*adat*) rights to resources. The Yudhoyono administration subsequently launched the National Agrarian Reform Program (Program Pembaruan Agraria Nasional), with various pledges to redistribute vast swathes of Ministry of Forestry, BPN and unused leasehold

8 MPR parliamentary decrees were intended to set broad policy directions for further legislative action by the lower house of parliament (Dewan Perwakilan Rakyat, DPR). While the MPR now lacks the constitutional authority to issue such decrees, the decrees already enacted remain in force and are applicable.

land to peasants and landless farmers (Rachman 2011). However, institutional recalcitrance from both the Ministry of Forestry and the Ministry of Agriculture, combined with the president's inability to assert his authority over the divided ministries, was a factor in undermining the program, which failed to meet its ambitious targets (Rachman 2011).

Despite initial rhetoric to the contrary, the National Agrarian Reform Program did not specifically address the key community grievances of land expropriation, but sidestepped them by focusing instead on transmigration and land titling. The processes for allocating parcels of land through transmigration schemes are rarely transparent and are based on patronage relationships with program administrators. It is commonly reported that plots are subsequently sold by program recipients, suggesting that such state-sponsored land redistribution is primarily a mode of asset redistribution rather than a way of directly facilitating access to land for farming.

Under the National Agrarian Reform Program, BPN continued to register land titles, mostly for farmers already occupying the land. Increases in the number of land certificates issued were then presented in public discourse as an indicator of successful land reform. However, many agrarian activists still associate land titling with a World Bank-driven land agenda,[9] prompting SPI to warn that 'the struggle for agrarian reform can get ensnared in the traps set by powerful neoliberal agendas which we actually should be fighting against' (Purwanto 2013: 9). According to this view, land titling is the first step towards the marginalisation of peasant land, as market-based processes eventually act to exclude individuals from their own land (Hall, Hirsch and Li 2011).

Although they were initially optimistic about the National Agrarian Reform Program, land reform activists were eventually disappointed. In the words of Noer Fauzi Rachman:[10]

> KPA's leaders have worked closely with BPN's policy reform process from conception to implementation […]. KPA hoped to see a genuine government agrarian reform program, dedicated to overcoming poverty and protecting human rights as its fundamental values. But, after four years of implementation, land rights activists including KPA have concluded that President Yudhoyono's Program for Agrarian Reform has moved too far from the experiences of the victims of land expropriation and the day-to-day struggles of poor rural people (Rachman 2009).

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9 The World Bank began financing Indonesia's Land Administration Project in 1994. The main objective was 'to foster efficient and equitable land markets and alleviate social conflicts over land, through acceleration of land registration' (World Bank 1994: 2).

10 Noer Fauzi Rachman is a former chair of KPA and currently sits on KPA's Expert Advisory Council.

LAND REFORM UNDER JOKO WIDODO

In the lead-up to the 2014 presidential election, Joko Widodo's campaign was openly backed by peasant organisations that hoped for 'genuine agrarian reform', such as KPA and SPI. Widodo followed up on his pre-election land reform pledges with a five-year development plan for 2015–19, released in January 2015, that specified that 4.1 million hectares of forestry land would be released for farming (apparently in association with the transmigration program); 3.9 million hectares of community-owned land would be legalised under BPN's land-titling procedure; 1 million hectares of land with existing land-use rights (*tanah hak*), such as long-term agricultural leases (HGU), uncertified transmigration lands and neglected lands (*tanah terlantar*), would be redistributed to smallholder farmers; and 2.7 million hectares of community forestry programs would be developed, including social forestry and community-based forestry, and the gazetting of village forests and customary (*adat*) forests.

Throughout 2015, there was strong support from the political elite for expanding the transmigration program, including the signing of an interministerial memorandum of understanding to prepare 9 million hectares of land for this purpose.[11] At the same time, the minister of agriculture has called for transmigration to support various large-scale food estates in Kalimantan, Papua and elsewhere, aimed at addressing nationalist concerns about food and energy sovereignty. Land titling, meanwhile, continues to be viewed sceptically as a mode of land reform. The challenge of achieving the third pillar of agrarian reform outlined in the five-year plan (the redistribution of *tanah terlantar*) is likely to be the most intractable and to become the focus of peasant activism, and should be the key yardstick against which success in agrarian reform under President Widodo should be measured in 2019. The area proposed under community forestry programs is a significant, and highly optimistic, scaling-up of existing community forestry models, the total coverage of which was estimated to cover only 650,000 hectares by the end of 2014, of which only 160,000 hectares were operating under the required business management and utilisation permit (*izin usaha pengelolaan dan pemanfaatan*) (Praputra, Sahide and Santosa 2015).

The most important legal reform to date has been the drafting of a new land law aimed not at replacing, but at complementing, the Basic Agrarian Law of 1960. The proposed land law continues to be controversial

11 The memorandum was signed in Jakarta on 8 May 2015 by Marwan Jafar (minister of villages, disadvantaged regions and transmigration), Ferry Mursyidan Baldan (minister of agrarian affairs and spatial planning) and Siti Nurbaya Bakar (minister of environment and forestry).

within the agrarian reform movement, however, and at the time of writing (late 2015) was yet to be legislated. In terms of institutional changes, BPN has been given ministerial status, becoming part of the Ministry of Agrarian Affairs and Spatial Planning, in an attempt to address the sectoral interests that allegedly prevented reform in the past and to empower an agency that has been widely viewed by many activists as an institutional ally (KPA 2014: 31). Like his predecessors, Widodo recognises the political constraints to equitable land reform, associated with patronage and corruption, and is ostensibly committed to addressing them. At this stage, there is no indication that his government is likely to embrace a radical ideological shift away from a market-based approach and logic to land relations.

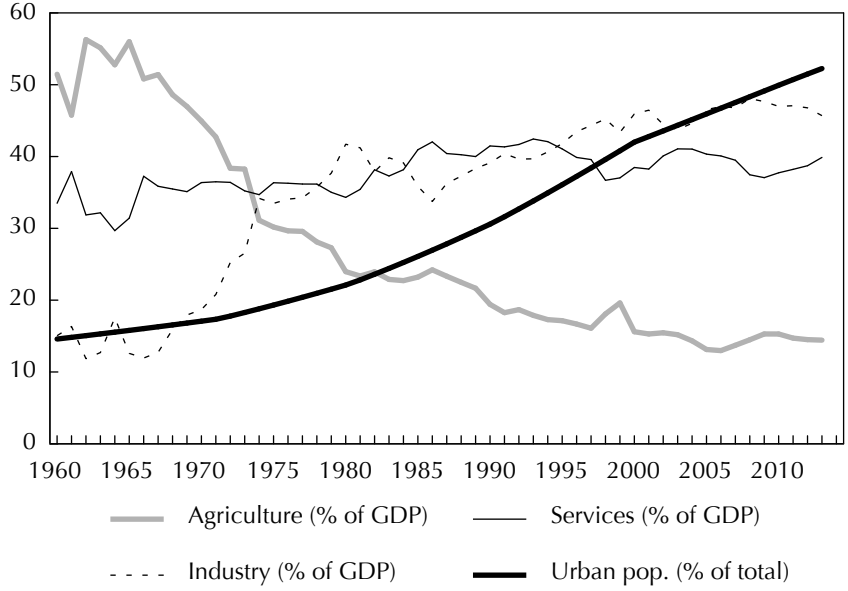
Given recent cycles of hope and disillusionment, it seems likely that any current optimism towards the Widodo administration's land reform program could again end in disappointment. However, rather than emphasising the legal, bureaucratic, political or ideological factors that might undermine the program, I will present an alternative analysis that instead emphasises the broader structural processes of livelihood transformation that are shaping agrarian reform opportunities in Indonesia.

AGRARIAN TRANSFORMATIONS IN CONTEMPORARY INDONESIA

The Indonesian economy is no longer dominated by agriculture. As early as the 1970s, agriculture was eclipsed by both services and industry in terms of contribution to the national economy, and in 2010, the number of Indonesians living in urban areas exceeded those living in rural areas (Figure 11.1). The 2010 national census reported that more of the working-age population derived their main source of income from the services sector than from agriculture, forestry and fisheries. Moreover, according to the National Labour Force Surveys (Survei Angkatan Kerja Nasional, Sakernas), the total number of people actually working in agriculture has been declining in absolute terms since at least 2003. This reality needs to be incorporated into a modern narrative for agrarian performance that departs from the arguments presented in the 1960s, when agriculture constituted more than 50 per cent of national GDP and involved some 85 per cent of the population.

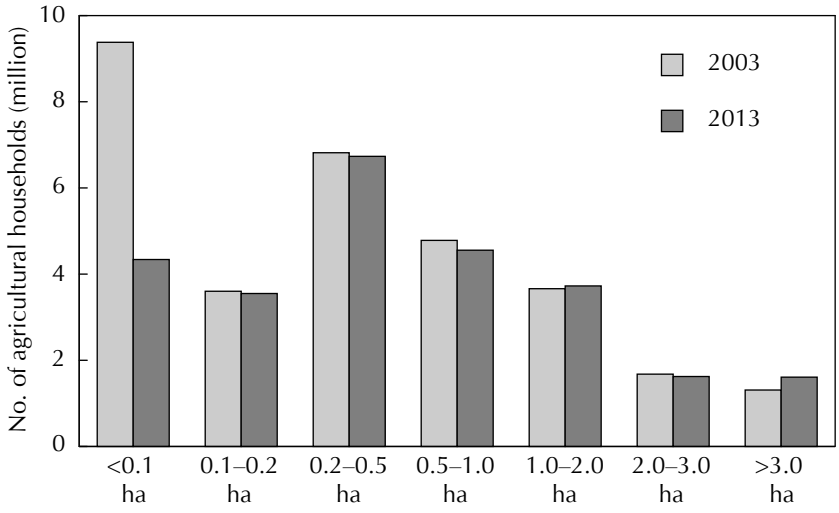
Indonesia's decennial agricultural censuses are tasked with surveying every agricultural household in Indonesia. In 2013, for the first time, the agricultural census recorded a dramatic decline in the total number of agricultural households across the country (Figure 11.2). While there appears to have been a change in the enumeration unit for an agricultural

Figure 11.1 Share of agriculture, industry and services in GDP, and share of urban population in total population, 1960–2013



Source: Data from World Bank (2015).

Figure 11.2 Number of agricultural households in Indonesia by size of landholding, 2003 and 2013



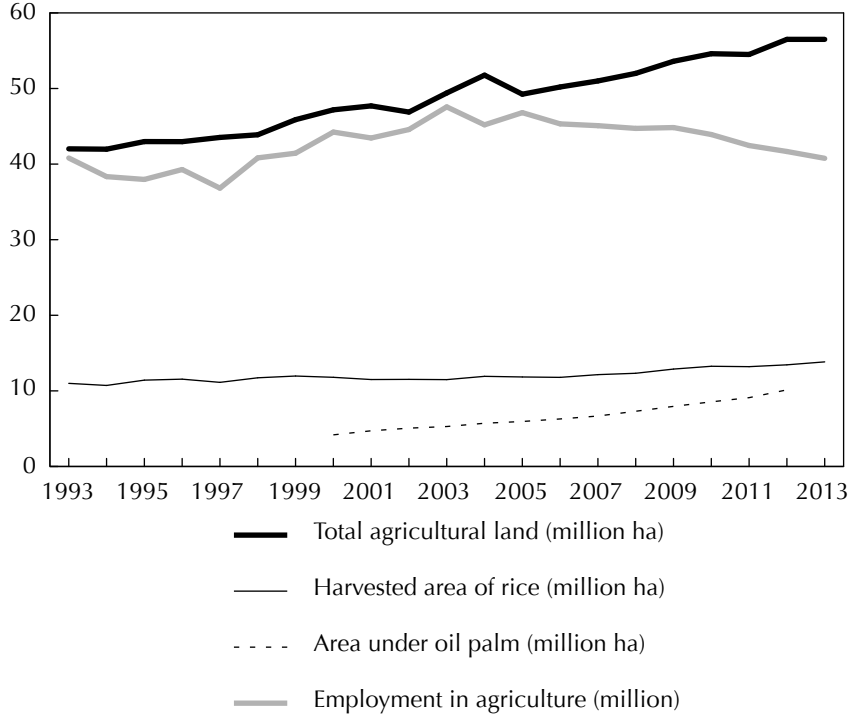
Source: BPS (2015a).

household,[12] the number of households primarily engaged in food crop production (which was not affected by the enumeration changes) had also declined, albeit to a far less dramatic extent. The 2013 agricultural census identified 26 million households engaged in agriculture, while the 2010 national census (from which the sampling frame for the agricultural census was drawn) identified a total of 61 million Indonesian households, such that approximately 42 per cent of all households would appear to be engaged in agriculture. Moreover, the 2013 agricultural census suggests that off-farm income, on average, contributes 46 per cent of total household income for agricultural households (BPS 2015a). This is not to understate the critical importance of food self-provisioning for many household livelihood strategies in Indonesia, but simply to present the emerging reality of rural pluriactivity in Indonesia, which appears to confirm a shift away from a reliance on farming. The mild increase in households holding more than 3 hectares recorded in the agricultural census (Figure 11.2) could be interpreted either as a consolidation of adequately sized farm holdings or, alternatively, as a product of capitalist processes of accumulation and dispossession as farmers are pushed off their land and forced out of farming. Detailed field research would be required to identify the actual processes at work in different parts of Indonesia.

Certainly, one of the striking features of agrarian change across Indonesia is that the decline in the number of individuals involved in agriculture has occurred at the same time that the total area being used for agriculture has been steadily increasing (Figure 11.3). This reflects the dramatic increase in the outer islands of Indonesia of oil palm plantations, which tend to be more capital than labour intensive. While this expansion has been dominated by large-scale estates, smallholder planters have also performed a critical role, and managed an estimated 41 per

12 The national statistics agency (Badan Pusat Statistik, BPS) insists it has recorded an overall decline in the number of 'agricultural households'. However, whereas the 2003 census took all households that undertake farming activities (paddy, secondary (*palawija*) crops, horticulture, estate crops, animal husbandry, aquaculture and forestry products) as the basic enumeration unit, the unit for 2013 includes all households that grow paddy and *palawija* crops, but other farmers only if they sell at least part of their farm produce. As a result, households with small gardens or orchards, and those maintaining small numbers of livestock, are no longer included in the census. This is reflected in the dramatic decline in the number of agricultural households recorded as holding less than 0.1 hectares (roughly equivalent to a quarter-acre block) (Figure 11.2). I would argue, however, that by excluding backyard gardens, the 2013 census presents a more accurate reflection of contemporary farm households across Indonesia.

Figure 11.3 Area of agricultural land and employment in agriculture, 1993–2013



Source: World Bank (2015); BPS (2015b, 2015c).

cent of the total area planted with oil palm in 2012 (BPS 2015b). It appears likely that the apparent decline of peasant farming can be explained in many instances by processes of dispossession due to large-scale land grabbing (Li 2011), or indeed by everyday processes of local accumulation as better-off farmers subsume the holdings of more marginal farmers (Li 2014). However, shifting livelihood aspirations are an important additional factor.

For many years, scholars such as Jonathan Rigg (2000, 2005) have presented a nuanced portrait of the changing role of farming in household livelihood strategies right across Southeast Asia, and the declining importance of access to agricultural land for poverty alleviation. My own fieldwork in South Sulawesi (Neilson and Shonk 2014) certainly supports the existence of a broader aspirational shift, whereby households may rely on agriculture as a back-up livelihood strategy, but generally prioritise off-farm income generation for wealth accumulation and inter-

generational life improvement. Older farmers often say that they hope their children will be able to find better work away from the farm, though they can fall back on farming if they are 'unfortunate' (*nasib buruk*) or are 'unable to succeed' (*tidak berhasil*) off-farm. Land is still important, but more for its cultural values, for asset speculation and as a back-up livelihood strategy, rather than for profit maximisation through farming.

Some peasant organisations, meanwhile, are integrating a land reform agenda within a broader discursive struggle to achieve 'peasant rights' and 'food sovereignty' (SPI 2014), reflecting their close affiliation with the international peasant movement, La Via Campesina. SPI frames the struggles of its constituencies as connected with the systemic oppression of all peasants in the global south, due to a 'corporate food regime' that has arisen from the proliferation of neoliberal market forces (Claeys 2015). It looks to land reform as the first step towards forging a 'peasant way' that will simultaneously foster 'poverty reduction, economic development, food production, and environmental stewardship' (Rosset 2011: 25). This ideal of maintaining a peasant lifestyle, however, may be odds with the modern livelihood aspirations of the majority of Indonesia's rural households. Bernstein's (2014) critique of the fetishisation of a 'peasant way' within a global system in which an idealised peasantry no longer exists in any meaningful way, is particularly salient in this regard.

The recent experience of land reform and land occupations in Indonesia, whereby a 'disappointingly high proportion' of land reform beneficiaries are subsequently selling their land within a few years of gaining access (Warren and Lucas 2013: 375), is particularly suggestive. While individual cases would require further research, it appears to highlight the speculative asset value of land in contemporary Indonesia rather than any embedded productive value related to agriculture or a desire to farm. Recognition of the importance of asset or wealth redistribution within land reform agendas, in addition to (or perhaps rather than) any benefits derived from improved access to farming opportunities, is essential to constructing a more realistic rationale for land reform.

RETHINKING CONTEMPORARY LAND REFORM MODALITIES

It is possible to identify a six-fold classification of agrarian reform modalities (including actions, discursive practices and demands) in Indonesia. I present these in an attempt to reassess the conceptualisation of agrarian reform processes in Indonesia and to tease out some of the conflicting agendas that surround contemporary agrarian and land reform debates.

First, we can identify a process of class-based land redistribution, exemplified by BTI's *aksi sepihak* campaign of the early 1960s, where

petani gurem and landless rural labourers sought to achieve the redistribution of land controlled by local landlords and exploitative village elites. This modality is a response to 'horizontal' land-based class differentiation, which is primarily concentrated in the densely populated parts of Java, but is also found to a lesser extent in some of the outer islands. While uneven access to land can act as a rationalising narrative for land reform, and some contemporary land activists continue to emphasise such a class-based narrative, it rarely features in overt contemporary political action.

Second, there are land reform processes whereby peasants resist unjust land acquisitions. This is the dominant mode of contemporary agrarian resistance in Indonesia, and is advocated in response to land-grabbing practices by corporations with the active support of the state, which were widespread during the New Order and have continued thereafter. The instances of agrarian conflict identified by KPA are symptomatic of this resistance and constitute the core rationale for modern peasant mobilisation around land reform. A dominant narrative within the land reform movement is to emphasise that conflict arises when people attempt to claim back land that was wrongfully taken from them in the past, and that it is in these spaces of conflict that comprehensive land reform is required. State-led agrarian reform programs largely sidestep these demands, however, through land-titling and transmigration programs.

A third modality of land reform (or more properly agrarian reform) constitutes a systemic critique of the dominant global corporate food regime, and argues for a peasant resistance that includes, but also moves beyond, explicitly land-based reform. This modality involves demands for changes to trade policies (commonly in favour of agricultural protectionism), changes to taxation policies, floor prices for agricultural products, subsidised credit and a legal framework to regulate agrarian institutions such as sharecropping (see, for example, Syahyuti 2004). Agrarian activism here is focused on promoting peasant rights by challenging the dominant global food system. This modality of reform is encapsulated by La Via Campesina's application of food sovereignty at the global level, which emphasises the role of peasants as primary producers in the food system, and is a discourse increasingly adopted within Indonesia by SPI.

A fourth modality (presented more fully by Fay and Denduangrudee in Chapter 4 of this volume) is the campaign to recognise *adat* claims over land by particular indigenous groups and ethnic communities, spearheaded by the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN). This movement has had some legal success with Constitutional Court Decision 35/PUU-X/2012, which supports *adat* claims within the national forest estate and has prompted

the drafting of a new law (yet to be legislated) on the recognition and protection of *adat* communities. It should be noted that on some matters, the *adat* land rights movement is often at odds with the demands of peasant organisations in Indonesia and so represents a discrete set of community demands and claims.

The fifth modality is negotiated land access rights, whereby peasants are afforded access to (usually) state-held land on a temporary or restricted basis. This is increasingly being applied to forestry lands in Indonesia, through programs such as Community-based Collaborative Forest Management (Pengelolaan Hutan Bersama Masyarakat, PHBM) in Java. Under this system, the State Forestry Corporation allows carefully selected individuals to cultivate understory crops beneath the canopy of valuable timber species owned by the company in exchange for community policing of timber theft. A similar program exists in the outer islands, where the Ministry of Forestry has entered into community forestry (*hutan kemasyarakatan*) agreements, providing medium-term access rights (generally for 20 years) for farmers to plant tree crops on the condition that the required density of shade trees is maintained. These access regimes have often been negotiated in response to 'illegal' land occupations by local communities, and so they have come to represent—in practice—a reassertion of state control over land rather than genuine redistribution (Peluso, Afiff and Rachman 2008). Even so, there is still enormous institutional inertia within the Ministry of Environment and Forestry when it comes to approving such schemes.

The sixth modality is state-sponsored land redistribution, which describes the dominant agrarian reform agenda offered by the Indonesian state, and which reflects a programmatic continuity with the Suharto-era transmigration program. Based on the premise of problematic landlessness (in Java and Bali) and strong demand for farmland, this modality involves opening up new agricultural land from the forest estate and redistributing 2-hectare plots to selected individuals. The discursive rationale of food sovereignty (*kedaulatan pangan*)—popularly equated with national food self-sufficiency—is being used to advance such programs, and to justify corporate land grabbing for food estates in places like Kalimantan and Papua (Ito, Rachman and Savitri 2014). Indeed, many transmigration programs are analogous to land grabbing when they involve the dispossession of indigenous communities.

Finally, it is important to recognise, at least as a strategic rhetorical device, the formal act of BPN issuing land titles over land already claimed by individuals (as a possible seventh modality). Notwithstanding the attendant side-effects of land marketisation and potential dispossession that this process entails, it is an integral aspect of government claims to be enacting land reform in Indonesia.

CONCLUSION: PROSPECTS OF LAND REFORM FOR POVERTY ALLEVIATION

Despite occasional grounds for optimism stemming from periodically supportive legal, bureaucratic and political structures, Indonesian land reform programs have repeatedly failed to contribute meaningfully to rural poverty alleviation. It appears unlikely that President Widodo's program will constitute a significant departure from its predecessors in this regard.

In post-authoritarian Indonesia, the political agency of Indonesian peasants, and peasant groups, demanding land reform has undoubtedly increased. Community occupation of disputed lands has become widespread; access rights to forestry lands have been negotiated; the legal framework for further redistribution has been established; and 'land reform by leverage' does appear to have achieved some notable successes for the movement. However, even in the current political context in which land reform has been reinstated on the national policy agenda, there remain a number of challenges for implementing widespread or comprehensive land reform, as it is envisaged by the leading peasant organisations. These include Indonesia's notoriously problematic land law, continuing interministerial conflict and, indeed, the powerful, entrenched corporate interests innate to Indonesian political economy.

This chapter has further argued that the assumption that poverty alleviation pathways can be established through land reallocations for agriculture is questionable and may be inconsistent with what we know about livelihood change and processes of agrarian transformation in Indonesia today. As a result, the agrarian reform movement and peasant organisations may need to articulate a refined narrative of agrarian reform that is internally coherent and analytically consistent with these broader processes. Such a narrative might emphasise the social security and cultural functions of land rather than the alleged poverty alleviation potential of land reform for agriculture.

Finally, there is a tendency for extremely diverse social processes and disparate political demands to be conflated under the banner of *reforma agraria*, confusing both the public policy debate and the ability of some activist organisations to successfully project an argument for reform. The continuing discord between peasant organisations' conceptualisations of land reform and the dominant state-projected narrative is therefore a cause of concern, and the modalities presented here are intended to help clarify the underlying sources of such tensions.

REFERENCES

Afiff, S., N. Rachman, G. Hart, L. Ntsebeza and N. Peluso (2005) 'Redefining agrarian power: resurgent agrarian movements in West Java, Indonesia', working paper, Recent Work Series, Center for Southeast Asia Studies, University of California, Berkeley, CA, 28 December.

Anderson, B. (1983) 'Old state, new society: Indonesia's New Order in comparative historical perspective', *Journal of Asian Studies*, 42(3): 477–96.

Bachriadi, D., A. Lucas and C. Warren (2013) 'The agrarian movement, civil society, and emerging political constellations', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press and Swallow Press, Athens, OH: 309–71.

Bakker, L. and S. Moniaga (2010) 'The space between: land claims and the law in Indonesia', *Asian Journal of Social Science*, 38(2): 187–203.

Bernstein, H. (2014) 'Food sovereignty via the "peasant way": a sceptical view', *Journal of Peasant Studies*, 41(6): 1,031–63.

BPN (Badan Pertanahan Nasional) (2015) 'Sekilas reforma agraria' [An overview of agrarian reform], National Land Agency (BPN), Jakarta. Available at http://www.bpn.go.id/Program/Reforma-Agraria

BPS (Badan Pusat Statistik) (2015a) 'Sensus pertanian' [Agricultural census], Statistics Indonesia (BPS), Jakarta. Available at http://st2013.bps.go.id/dev2/index.php

BPS (Badan Pusat Statistik) (2015b) 'Pertanian dan pertambangan: perkebunan' [Agriculture and mining: plantations], Statistics Indonesia (BPS), Jakarta. Available at http://www.bps.go.id/Subjek/view/id/54#subjekViewTab3|accordion-daftar-subjek3

BPS (Badan Pusat Statistik) (2015c) 'Sosial dan kependudukan: tenaga kerja' [Social and population: labour], Statistics Indonesia (BPS), Jakarta. Available at http://www.bps.go.id/Subjek/view/id/6#subjekViewTab3|accordion-daftar-subjek1

Bullinger, C. and M. Haug (2012) 'In and out of the forest: decentralisation and recentralisation of forest governance in East Kalimantan, Indonesia', *Austrian Journal of South-east Asian Studies*, 5(2): 243–62.

Claeys, P. (2015) 'Food sovereignty and the recognition of new rights for peasants at the UN: a critical overview of La Via Campesina's rights claims over the last 20 years', *Globalizations*, 12(4): 452–65.

Cohen, S.I. (1978) *Agrarian Structures and Agrarian Reform: Exercises in Development Theory and Policy*, Martinus Nijhoff Social Sciences Division, Leiden and Boston, MA.

Hall, D., P. Hirsch and T.M. Li (2011) *Powers of Exclusion: Land Dilemmas in Southeast Asia*, NUS Press and University of Hawai'i Press, Singapore and Honolulu.

Ito, T., N.F. Rachman and L.A. Savitri (2014) 'Power to make land dispossession acceptable: a policy discourse analysis of the Merauke Integrated Food and Energy Estate (MIFEE), Papua, Indonesia', *Journal of Peasant Studies*, 41(1): 29–50.

KPA (Konsorsium Pembaruan Agraria) (2013) *Warisan Buruk Masalah Agraria dibawah Kekuasaan SBY: Laporan Akhir Tahun 2013* [A Legacy of Agrarian Problems from the SBY Period: End of Year Report 2013], Consortium for Agrarian Reform (KPA), Jakarta.

KPA (Konsorsium Pembaruan Agraria) (2014) *Membenahi Masalah Agraria: Prioritas Kerja Jokowi–JK Pada 2015: Catatan Akhir Tahun 2014* [Fixing Agrar-

ian Problems: Priority Tasks for Jokowi–JK in 2015: End of Year Report 2014], Consortium for Agrarian Reform (KPA), Jakarta.
Li, T.M. (2011) 'Centering labor in the land grab debate', *Journal of Peasant Studies*, 38(2): 281–98.
Li, T.M. (2014) *Land's End: Capitalist Relations on an Indigenous Frontier*, Duke University Press, Durham, NC.
Lipton, M. (2009) *Land Reform in Developing Countries: Property Rights and Property Wrongs*, Routledge, London and New York, NY.
Lucas, A. and C. Warren (2003) 'The state, the people and their mediators: the struggle over agrarian law reform in post-New Order Indonesia', *Indonesia*, 76(October): 87–126.
Lucas, A. and C. Warren (2013) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press and Swallow Press, Athens, OH.
Mackie, J.A.C. (1961) 'Indonesia's government estates and their masters', *Pacific Affairs*, 34(4): 337–60.
Mortimer, R. (1972) *The Indonesian Communist Party and Land Reform, 1959–1965*, Centre of Southeast Asian Studies, Monash University, Clayton.
Neilson, J. and F. Shonk (2014) 'Chained to development? Livelihoods and global value chains in the coffee-producing Toraja region of Indonesia', *Australian Geographer*, 45(3): 269–88.
Nurdin, I. (2014) 'Resolving agrarian conflict through implementation of land reform', *Land Reform*, 1(May): 71–85.
Peluso, N.L., S. Afiff and N.F. Rachman (2008) 'Claiming the grounds for reform: agrarian and environmental movements in Indonesia', *Journal of Agrarian Change*, 8(2–3): 377–407.
Praputra, A.V., M.A.K. Sahide and A. Santosa (2015) 'Menata era baru kehutanan masyarakat' [Planning a new era in community forestry], FKKM Policy Brief, Forum Komunikasi Kehutanan Masyarakat (FKKM), Jakarta,
Purwanto, H. (2013) 'Local to global: how Serikat Petani Indonesia has accelerated the movement for agrarian reform', *Celebrating 20 Years of Struggle and Hope*, La Via Campesina. Available at http://viacampesina.org/downloads/pdf/openbooks/EN-13.pdf
Rachman, N. (2009) 'Land titles do not equal agrarian reform', *Inside Indonesia*, 98(October–December).
Rachman, N. (2011) 'The resurgence of land reform policy and agrarian movements in Indonesia', PhD dissertation, Department of Environmental Science, Policy, and Management, University of California, Berkeley, CA.
Rigg, J. (2000) *More than the Soil: Rural Change in Southeast Asia*, Routledge, London.
Rigg, J. (2005) 'Poverty and livelihoods after full-time farming: a South-east Asian view', *Asia Pacific Viewpoint*, 46(2): 173–84.
Rosset, P. (2011) 'Food sovereignty and alternative paradigms to confront land grabbing and the food and climate crises', *Development*, 54(1): 21–30.
SPI (Serikat Petani Indonesia) (2014) 'SPI: Jokowi bahas visi kedaulatan pangan Indonesia' [SPI: Jokowi discusses his vision for Indonesian food sovereignty], Indonesian Peasant Union (SPI), 1 May. Available at http://www.spi.or.id/?p=6920
SPI (Serikat Petani Indonesia) (2015) 'Menteri PPN Andrinof A. Chaniago: selamat ulang tahun ke-17 untuk SPI' [Minister of National Development Planning Andrinof A. Chaniago: happy 17th anniversary to SPI], *Pembaruan Tani*, 138: 4–5.

Syahyuti (2004) 'Kendala pelaksanaan landreform di Indonesia: analisa terhadap kondisi dan perkembangan berbagi faktor prasyarat pelaksanaan reforma agraria' [Constraints to implementing land reform in Indonesia: an analysis of the state and development of various preconditions for implementing agrarian reform], *Forum Penelitian Agro Ekomomi*, 22(2): 89–101.

Warren, C. and A. Lucas (2013) 'Agrarian resources and conflict in the twenty-first century', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press and Swallow Press, Athens, OH: 372–89.

White, B. (2015) 'Remembering the Indonesian Peasants' Front and Plantation Workers' Union (1945–1966)', *Journal of Peasant Studies*, 4 December. Available at http://dx.doi.org/10.1080/03066150.2015.1101069

World Bank (1994) 'Indonesia: Land Administration Project', World Bank, Washington, DC. Available at http://documents.worldbank.org/curated/en/1994/08/732940/indonesia-land-administration-project

World Bank (2015) 'World development indicators', World Bank, Washington, DC. Available at http://data.worldbank.org/data-catalog/world-development-indicators

12 Land tenure and agrarian structure in regions of small-scale food production

Aprilia Ambarwati, Ricky Ardian Harahap, Isono Sadoko and Ben White

Indonesia's staple food-grain agriculture is dominated by 'smallholder' farmers, but these smallholder communities are not homogeneous, egalitarian or static. Both macro data (such as the six decennial agricultural censuses since 1963) and various micro studies reveal considerable regional variation in patterns of land ownership and control; micro studies also show the universality of agrarian class differentiation (to varying degrees) in all Indonesian 'smallholder' farming communities between large landowners, middle owner–operator farmers, tenant farmers, and near-landless or landless farm workers. Both macro data and the available micro-level village studies also document the dynamics of change in patterns of land control and rural differentiation over time (White and Wiradi 1989; Bachriadi and Wiradi 2011).

Inequalities in land control are problematic for many reasons. Besides threatening the sustainability of domestic food production, they have negative effects on the distribution of employment opportunities and incomes in the agricultural sector and the rural economy generally. In the past, Asian rice-producing countries such as Japan, South Korea and Taiwan successfully implemented land and tenancy reforms that put an end to landlordism, imposed rigid maximum holding limits and turned tenant farmers into owners. The experience of these countries shows that such reforms, when well implemented, result in significant improvements in productivity, smallholder farmer welfare and rural income distribution, and lead to positive interactions between the farm and rural non-farm sectors (Saith 1986; Lipton 2009).

Law 5/1960 on Basic Agrarian Principles (the Basic Agrarian Law) established the principle that land has a social function, meaning that it must be treated as a means to promote social justice, not to further individual interests that promote concentration and the exploitation of the weak by the strong. The Basic Agrarian Law and Law 2/1960 on Share Tenancy provide for maximum limits on land ownership (with the maximum varying according to local conditions), regulation of the sharing of costs and benefits between share tenants and landowners, and the prohibition of absentee landlordism. But these provisions were never implemented; the land reform courts and committees were dissolved in 1970, soon after Suharto took power. His New Order regime prioritised the implementation of Green Revolution programs to increase rice production, without significant efforts to stem the process of differentiation in land control that normally accompanies agricultural commoditisation; rice imports were eliminated in normal years, and rural poverty incidence declined, but inequality increased.

One historical consequence of these policies is that Indonesian staple food production today is based on an unreformed agrarian structure. Patterns of land distribution may vary greatly from village to village in their shape and dynamics, but all show significant degrees of differentiation, which in some cases approaches polarisation. 'Differentiation' here means the emergence alongside smallholder owner–operators of larger proto-capitalist farmers and, at the other end of the scale, of near-landless and landless households that depend on wage employment on the larger farms for part of their livelihoods; 'polarisation' means further development of the 'cumulation of advantages and disadvantages', causing thinning-out of the middle group and an increase in the numbers of near-landless or landless until the dominant agrarian relation is that between capitalist farmers and near-landless or landless workers, and/or between landlords and tenant farmers (White 1989: 19–27; Bernstein 2010: Ch. 7).

Issues of land tenure and agrarian structure in lowland rice-producing villages have been relatively neglected in research since the 1980s. Following a productive surge of Green Revolution studies during the 1970s and 1980s, much of it produced under the auspices of the Agro-Economic Survey of Indonesia,[1] research turned away from agrarian political economy in lowland food-basket regions to issues of upland and forest resource management and, more recently, to the many large-

1 Among the better-known Green Revolution studies sponsored by the Agro-Economic Survey of Indonesia are Franke (1972), Collier et al. (1974), Hayami and Kikuchi (1981), Kasryno (1984), Hart (1986), White and Wiradi (1989) and Pincus (1996).

scale land grabs occurring in regions of oil palm and other agro-export production, and to the struggles of indigenous peoples for recognition of their status and rights.

In this general context, the Akatiga Foundation carried out two rounds of research in 20 villages in the chief rice-producing areas of West, Central and East Java, Lampung and South Sulawesi in 2013 and 2015.[2] The main aim of Akatiga's Food Autonomy Study (Studi Kemandirian Pangan)[3] was to examine patterns of access to farmland and their implications for productivity, employment and income distribution, as well as the relationship between landholdings and farm and non-farm incomes.

A few basic concepts have been used to guide the data collection and analysis.[4] We use a concept of *access* to land that is broader in scope than simple *ownership*.[5] Land control, as understood in this study, covers access to farmland through both ownership and lease, as well as share tenancy or mortgage (pawning). The concept of agrarian (or rural) differentiation, already explained above, is a tool to analyse emerging agrarian class structures and dynamics. We have used a simple set of basic farmer categories based on farm size, with an additional category to capture farmers with substantial non-farm as well as farm investments. These categories are:

1 landless farm workers;
2 near-landless farmers (those with less than 0.25 hectares);
3 medium farmers I (0.25–0.99 hectares);
4 medium farmers II (1.0–1.99 hectares);
5 large farmers (those with more than 2 hectares of land but no substantial non-farm assets); and
6 capital-rich farmers (those with more than 2 hectares of land plus substantial non-farm assets).

A third important concept is the *agrarian labour regime*, which means the modes of recruiting labour and organising it in production, and the

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2 The Akatiga Foundation in Bandung is a non-profit organisation focusing on social analysis. Since being founded in 1991, it has conducted research into agrarian and labour issues, small and medium-sized enterprises, community-driven development and public services.

3 The term *kemandirian pangan* is hard to translate. Literally meaning 'food autonomy', it falls somewhere between the notions of food security (*ketahanan pangan*), food self-sufficiency (*swasembada pangan*) and food sovereignty (*kedaulatan pangan*).

4 These concepts, and other aspects of our methodology, are discussed in detail in White (2015).

5 Ribot and Peluso (2003: 153–4) define 'access' as 'the ability to benefit from things', a broader notion than property theory's 'right' to benefit.

resulting mechanisms for transferring surplus labour between actors. To analyse these relationships we follow Bernstein's four basic questions for the understanding of production and reproduction of agrarian communities: 'Who owns what?' (ownership, control and access as defined above); 'Who does what?' (the division of labour between, for example, classes, genders, generations); 'Who gets what?' (labour regimes and patterns of surplus transfer); and 'What do they do with it?' (patterns of reproduction and capital accumulation) (Bernstein 2010: 22–5).

Farm–non-farm sector interactions and their role in processes of *capital accumulation and socio-economic differentiation* also have an important place in the analysis. In Indonesia and neighbouring countries, rural inequalities today are more nuanced and dynamic than previously, and not only based on control of land (Rigg 2001; De Koninck, Rigg and Vandergeest 2012). Although agriculture's share of total rural incomes has declined (De Koninck, Rigg and Vandergeest 2012: 32), agriculture still remains the single largest provider of rural incomes and employment, and still plays an important role in socio-economic differentiation processes.

Finally, the idea of *social efficiency* is used to focus the analysis on the socio-economic implications of patterns of land control. Assessments of agrarian structures, institutions and policies for development policy purposes should go beyond narrow criteria of labour productivity or private profitability to explore their efficiency (or effectiveness)[6] in meeting a society's key developmental imperatives and goals. In the current Indonesian context, achieving social efficiency in the staple food-grain sector requires fulfilment of multiple criteria, including improvements in productivity per hectare, employment and livelihood opportunities, income distribution, and sustainable agricultural technologies and practices. From this perspective, questions of which patterns of land tenure and which types of farming make best use of excess resources (such as labour), and how much of the income generated goes into the pockets of the relatively poor, become relevant for policy purposes (Berry 2011: 641). This idea is reflected in Indonesian law-making—for example, in article 6 of the Basic Agrarian Law, which states that 'all rights to land should have a social function' (White 2013).

The Akatiga study was carried out in 20 selected villages in 10 districts and five provinces, as shown below in Table 12.4, using a combination of quantitative and qualitative methods to provide a basic comparative picture of agrarian structures in each village. (Note that fictitious names have been used for the villages and companies mentioned in this chap-

6 While we have followed Berry (2011) in using the term 'efficiency', it could be argued that effectiveness (rather than efficiency) in achieving developmental goals is the more appropriate concept.

ter.) Teams of four researchers spent 14 days in each village, making an effective total of 54 workdays per village. Qualitative methods included transect walks, observations, group discussions and in-depth interviews; the quantitative data included agricultural census reports issued by the central statistics agency, Badan Pusat Statistik (BPS), some local-level statistics and our own surveys of 30 sample households in 12 of the 20 villages (those studied in 2013). Having obtained a basic picture of the landholding strata in each village through farmer lists and key informants, we selected the 30-household samples to represent the proportions in each stratum, but including at least two households in the large farmer or capital-rich farmer category. We studied a further eight villages in 2015, two each in Mesuji, Klaten, Blitar and Sidrap districts, purposely selected as districts where combine harvesting machines had been introduced in relatively large numbers.

As is well known, in village- and household-level research it is difficult to obtain accurate information on landholdings and incomes. The researchers used a variety of triangulation methods (in addition to the survey data) to achieve more reliable results, including perusal of the land tax records (*surat pemberitahuan pajak terhutang*, SPPT) and interviews with village officials and other key informants. While we do not claim a high level of accuracy in our estimates of household income in the 30-household samples, we have been as careful as possible in estimating net incomes in all the households' major activities. While the data are not sufficient to make detailed estimates of (for example) poverty levels, we are confident that they are reliable enough to provide a picture of the relative levels and balance of farm and non-farm incomes, which was our main purpose in collecting them.

LAND CONTROL AND AGRARIAN STRUCTURE: EVIDENCE FROM THE DATA

We begin with a brief analysis of the relevant secondary data. Bachriadi and Wiradi's (2011) comparison of agricultural census data from 1963 to 2003 shows the number of farm households growing at roughly the same rate as total population growth. The number of marginal farm households (*petani gurem*) appears to have increased between 1983 and 2003, as shown in Table 12.1.

The table shows that the increase in the number of smallholder households was not matched by a commensurate increase in the area of farmland, except in the period 1993–2003. As could be expected, the share of marginal farmers (those with less than 0.5 hectares) increased, and by 2003 this group represented more than half of all Indonesian farm households.

Table 12.1 Number of landholding agricultural households and land area controlled, 1963–2003

Census year	No. of agricultural households controlling land (million)	Total area of land controlled (million ha)	Average land area controlled (ha)	Share of marginal farm households (controlling <0.5 ha) (%)	Change in no. of agricultural households controlling land (%)	Change in total area of farmland (%)
1963	12.2	12.9	1.05	44		
1973	14.4	14.2	0.99	46	18	10
1983	18.8	16.8	0.89	45	31	18
1993	21.2	17.1	0.81	49	13	2
2003	24.3	21.5	0.89	51	15	26

Source: Bachriadi and Wiradi (2011: 22), based on the agricultural censuses for 1963–2003.

The latest (2013) agricultural census, however, seems to show a turnaround in these trends, with modest declines in the number of farms of 0.1–0.5 hectares and a sharp decline (of more than 50 per cent) in microfarms of less than 0.1 hectares (Table 12.2). This raises the question of whether this represents a real change or, rather, a change in the way in which 'farm households' were defined, or the way the data were collected and analysed.

In our view, much of the apparent change may be due to changes in the definitions and criteria used by BPS. It is difficult to see exactly what definitions BPS used in formulating the tables in its 2003 and 2013 census publications; it is important that this matter is clarified, to avoid drawing possibly misleading conclusions for policy (as discussed by Neilson in Chapter 11 of this volume). But in any case, when we look at the *types* of farms in which the most spectacular declines have (apparently) occurred, we find that they are horticultural farms (which declined by 6.34 million, or 37 per cent, between 2003 and 2013), not rice-producing farms (which declined by only 58,000, or 0.4 per cent) (BPS 2013).

Bachriadi and Wiradi (2011) have also analysed the changes in the landholding status of smallholders, as shown in Table 12.3. The table suggests that the proportion of pure tenants (who own none of the land they cultivate) is quite small, at less than 5 per cent in recent census years, while the share of part-owner, part-tenants is quite significant at around one-quarter of all farmers. This is a much lower tenancy rate than the one found in our sample villages, as explained below. However, it should be

Table 12.2 Change in number of landholding agricultural households by land area controlled, 2003–13

Farm size (ha)		No. of households (million)		Change	
		2003	2013	million	%
1	<0.1	9.38	4.34	–5.04	–53.75
2	0.10–0.19	3.60	3.55	–0.05	–1.45
3	0.20–0.49	6.82	6.73	–0.08	–1.23
4	0.50–0.99	4.78	4.55	–0.23	–4.76
5	1.0–1.9	3.66	3.73	0.7	1.76
6	2.0–2.9	1.68	1.62	–0.55	–3.27
7	≥3.0	1.31	1.61	0.30	22.81
Total		**31.23**	**26.14**	**– 5.10**	**–16.32**

Source: BPS (2013).

Table 12.3 Distribution of smallholder farmers by landholding status, 1963–2003 (%)

Status	1963	1973	1983	1993	2003
Owner–operator	64.1	74.7	69.3	71.7	70.5
Part-owner, part-tenant	29.1	22.1	25.3	24.5	26.1
Pure tenant	6.8	3.2	5.4	3.8	3.4
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Source: Bachriadi and Wiradi (2011: 30).

noted that the figures in Table 12.3 refer to all farms (including horticultural farms) while our study is limited to food-producing farms in rice-producing regions, where one would expect concentration of ownership, and resulting tenancy rates, to be higher.

Turning now to the results of our own field research, Table 12.4 shows our estimates of the patterns of land ownership and control in the 20 villages we studied. There is clearly some interesting intervillage variation. In several villages there is a clear pattern of polarisation of ownership and control, with large numbers of households owning no land (over 40 per cent in eight villages and over 50 per cent in five villages); high rates of tenancy (much higher than those found in the agricultural

Table 12.4 Estimated patterns of land control and land availability in the 20 sample villages[a]

Village (district, province)	Land tenure status (% of all households)				Average area of farmland per household (ha)
	Owner–operator	Part-owner, part-tenant	Pure tenant	Land-less	
Villages studied in 2013					
Cisari (Karawang, W. Java)	9	15	36	40	0.07
Dawungan (Karawang, W. Java)	10	25	27	38	0.40
Karang (Indramayu, W. Java)	32	29	15	24	0.94
Wanakerta (Indramayu, W. Java)	17	32	24	27	0.16
Sidosari (Kebumen, C. Java)	40	20	30	10	0.15
Mulyoharjo (Kebumen, C. Java)	30	20	20	30	0.17
Wetanan (Cilacap, C. Java)	60	15	15	10	0.97
Sarimulyo (Cilacap, C. Java)	35	25	20	20	0.18
Walian (Wajo, S. Sulawesi)	15	25	59	–	1.61
Parangputih (Wajo, S. Sulawesi)	30	40	15	15	1.08
Cempaka (Bone, S. Sulawesi)	75	15	5	5	1.40
Gadingan (Bone, S. Sulawesi)	80	9	10	1	0.36
Villages studied in 2015					
Maja Sari (Mesuji, Lampung)	70	5	20	5	1.52
Tanjung (Mesuji, Lampung)	75	21	4	0	1.88
Kisaran (Klaten, C. Java)	58	20	15	12	0.13
Simalaya (Klaten, C. Java)	19	13	49	19	0.11
Kendah (Blitar, E. Java)	45	25	25	5	0.08
Tawangan (Blitar, E. Java)	59	30	10	1	0.16
Sambi (Sidrap, S. Sulawesi)	19	50	30	1	1.76
Kayaran (Sidrap, S. Sulawesi)	20	35	40	5	1.19

– = Insignificant (less than 1 per cent).

a For privacy reasons, fictitious names are used for the villages.

Source: Village monographs; focus group discussions; data from the subdistrict agricultural extension offices (Balai Penyuluhan Pertanian, Perikanan dan Kehutanan, BP3K).

censuses, as already noted), with pure or part-tenant farmers outnumbering owner–operator farmers in 13 villages; and rather small minorities of pure owner–operators. In other villages, in contrast, the majority of households are owner–operators of their own farms; see, for example, Gadingan, Cempaka, Tanjung, Maja Sari and Wetanan, where owner–operators comprise 60–80 per cent of all households. The highest rates of landlessness and lowest rates of ownership are found in West Java; in the villages of Cisari and Dawungan (Karawang district), 38–40 per cent of all households are landless and only 9–10 per cent own and operate their own farms. In fact, more than half the landowners in Cisari are absentees who live outside the district, and only 30 per cent of landowners in the village are descended from local land-owning families.

Another important result of the intervillage comparison is that inequalities in landholdings, and rates of landlessness, do not correlate simply with population pressures on land, or 'agrarian densities'—the average area of farmland available per household (see the last column of Table 12.4).

Table 12.5 shows the landholding status of farmers in our 30-household samples (for 12 villages only). As already explained, these samples were selected to match (roughly)[7] the patterns found in our estimations of village-wide landholding patterns.

We also used information from key informants to identify the largest landowners in each village (excluding absentee owners) and estimate the amount of land they own. The results are shown in Table 12.6.

In the majority of villages the holdings of the largest landowners are below the maximum size permitted by the Basic Agrarian Law—5 hectares of irrigated rice fields (*sawah*) in densely populated regions—even though those holdings may be 10–20 times the average available per household, and even though the largest 10 per cent of landowners may control more than half of all the village land. In six villages (all outside Java), however, we do find owners of 10, 20, 60 or even 200 hectares. The concentration of land control in a relatively few households does not result in concentration of farm operations into large farms. The larger landholdings are generally not cultivated by their owners but parcelled out in smaller units to tenant farmers (usually share tenants). As Table 12.4 shows, in 13 of the 20 sample villages more than half of all farmers do not own (all or part of) the land they cultivate. This pattern of widespread tenancy may have important implications for farm management and sustainabil-

7 'Roughly' because when households are interviewed in detail, their landholdings do not always correspond to those estimated at the time of sample selection. This is why, for example, the sample in Wanakerta includes 60 per cent landless, even though this was only 27 per cent in the village-wide estimation.

Table 12.5 Distribution of sample households in 12 villages by farm size[a]

Village (district, province)	Large farmers (≥2.0 ha)	Medium farmers II (1.0–1.99 ha)	Medium farmers I (0.25–0.99 ha)	Near-landless farmers (<0.25 ha)	Landless farm workers
Cisari (Karawang, W. Java)	3	6	15	36	40
Dawungan (Karawang, W. Java)	15	30	10	5	40
Karang (Indramayu, W. Java)	10	15	30	5	40
Wanakerta (Indramayu, W. Java)	5	10	10	15	60
Sidosari (Kebumen, C. Java)	3	7	30	46	10
Mulyoharjo (Kebumen, C. Java)	0	13	27	40	20
Wetanan (Cilacap, C. Java)	5	16	21	37	21
Sarimulyo (Cilacap, C. Java)	11	16	26	42	5
Walian (Wajo, S. Sulawesi)	36	46	11	0	7
Parangputih (Wajo, S. Sulawesi)	14	34	21	10	21
Cempaka (Bone, S. Sulawesi)	3	57	33	0	7
Gadingan (Bone, S. Sulawesi)	0	27	62	10	1

a Farm size = the operated holding (including all land cultivated by the farmer, whether owned or not owned, and excluding owned land that is cultivated by others).

Source: Akatiga field survey.

ity. Landowners can terminate tenancy agreements at will; besides this, share tenancy is one important form of value transfer or 'capture' in the village economy, between relatively large numbers of relatively poor tenants and smaller numbers of relatively large landowners.

WHO ARE THE LARGE LANDOWNERS?

In this section we describe the large landowners, both local and absentee.

In Maja Sari (Mesuji district, Lampung), the largest landowner has 60 hectares of *sawah* and is the wealthiest person in the village. He is also the head of the local farmers' group (*gapoktan*), a fertiliser distributor and the owner of eight rice mills, 10 combine harvesters, and oil palm and rubber plantations with turnover in the tens of billions of rupiah.

In Kayaran (Sidrap district, South Sulawesi), the largest landlord in our sample, with 200 hectares of *sawah*, is also the owner of the largest rice-milling operation in the district. In Sambi (also in Sidrap), a landlord of aristocratic descent possesses 80 hectares of *sawah* inherited from his

Table 12.6 Largest landowners in the sample villages

Village (district, province)	Estimated area of land owned
Cisari (Karawang, West Java)	Landlord 1 = 5 hectares
Dawungan (Karawang, West Java)	Landlord 1 = 3.1 hectares Landlord 2 = 3.8 hectares
Karang (Indramayu, West Java)	Landlord 1 = 5 hectares
Wanakerta (Indramayu, West Java)	Landlord 1 = 1.5 hectares Landlord 2 = 1.75 hectares
Sidosari (Kebumen, Central Java)	Landlord 1 = 1.4 hectares
Mulyoharjo (Kebumen, Central Java)	Landlord 1 = 1.5 hectares
Wetanan (Cilacap, Central Java)	Landlord 1 = 2 hectares Landlord 2 = 3 hectares
Sarimulyo (Cilacap, Central Java)	Landlord 1 = 1.6 hectares
Walian (Wajo, South Sulawesi)	Landlord 1 = 50–100 hectares
Parangputih (Wajo, South Sulawesi)	Landlord 1 = 10 hectares Landlord 2 = 25 hectares
Cempaka (Bone, South Sulawesi)	Landlord 1 = 5 hectares
Gadingan (Bone, South Sulawesi)	Landlord 1 = 1.8 hectares
Maja Sari (Mesuji, Lampung)	Landlord 1 = 60 hectares
Tanjung (Mesuji, Lampung)	Landlord 1 = 20 hectares
Kisaran (Klaten, Central Java)	Landlord 1 = 1.8 hectares
Simalaya (Klaten, Central Java)	Landlord 1 = 4 hectares
Kendah (Blitar, East Java)	Landlord 1 = 2 hectares
Tawangan (Blitar, East Java)	Landlord 1 = 6 hectares
Sambi (Sidrap, South Sulawesi)	Landlord 1 = 80 hectares
Kayaran (Sidrap, South Sulawesi)	Landlord 1 = 200 hectares

Source: Akatiga field survey; in-depth interviews.

parents (who owned 300 hectares); he also owns a large rice mill and six combine harvesters.

The pattern of large-scale land ownership in Java is quite different, with the largest owners having only 3, 4 or 5 hectares. But these (relatively) large owners also tend to be economically the most powerful actors in the village, having interests and investments in the non-farm sector and often occupying positions of power in village government, farmers' groups or other local organisations.

In Cisari (Karawang district, West Java), a landlord with 5 hectares of *sawah* is the head of the local farmers' group, the owner of a brickworks

and a village store, a trader in agricultural inputs and rice, and the owner of tractors for hire.

In Tawangan (Blitar district, East Java), the largest landowner with 6 hectares of *sawah* is also the village head; he has a poultry farm with thousands of laying hens, sells feed and medicines to other poultry farmers and provides veterinary services to owners of poultry and livestock.

In Cisari, where more than 76 per cent of households are landless workers or tenant farmers, an estimated 70 per cent of all farmland is owned by absentee landlords from Jakarta, Bekasi, Tangerang and Bandung. Absentee ownership, by both individuals and corporate entities, is a relatively new phenomenon in this village, beginning in the 1980s. The absentee-owned land is parcelled out to share tenants, as in the following two examples.

PT Xau acquired 35 hectares of farmland in Cisari in 1982. This land was first converted to a fruit orchard, but this collapsed during the crisis years, 1997–98. The land is currently used for tenant farming, based mainly on pump irrigation. Thirty hectares were converted to *sawah* with pump irrigation, at the request of local farmers. On this land, 40 share tenants now produce two crops of rice per year, paying half the crop as rent at harvest time. Other farmers grow *palawija* crops (various kinds of beans) on the remaining 5 hectares of rain-fed land. All farmers must be prepared to stop their farming operations if PT Xau should decide to take back the land. (The company plans eventually to construct a housing project on the land.)

Another company, PT Sentral, also owns 20 hectares of land in Cisari that has been converted to pump irrigation. As in the previous example, this land is cultivated by share tenants who pay a share of the crop as rent at harvest time.

The level of absentee land ownership is not significant in the sample villages in Central Java, or in some of the other villages in West Java (Karang, Wanakerta), if we exclude local owners who, because of the recent spate of subdivision (*pemekaran*) of village units, have suddenly become 'absentees' because they own land on the other side of the original village.

In one interesting case, the village government of Sidosari (Kebumen district, Central Java) has taken steps to limit land accumulation, in an informal agreement with villagers. One individual who initially acquired 10 *ubin* (140 square metres or 0.014 hectares) of land in 1957 had gradually purchased more plots over the years. Many of these purchases were made possible by his activities as a moneylender (*rentenir*): he was able to seize the land of a number of farmers who had pawned their land to him using their land titles as security for the loans. Presently he owns almost 5 hectares, both in and outside the village. Although this is still within

the maximum permitted by the Basic Agrarian Law (5 hectares of *sawah* in densely populated regions such as Central Java), villagers felt that he already owned too much land and should be prevented from acquiring more. The village government therefore reached an informal agreement with the villagers not to sell or pawn any more land to him.

In Dawungan (Karawang district, West Java), the larger landholdings mainly belong to rich *haji* landlords, the old village elite. They have acquired land through both purchase and moneylending (claiming the land of those who cannot redeem their loans). In Wanakerta (Indramayu district, West Java) and Parangputih (Wajo district, South Sulawesi), the large owners are mostly the new rich: civil servants and overseas migrant workers (TKI/TKW).[8] In Wanakerta almost half of all young men and women are currently working overseas. Their remittances and savings are generally used, first, to repay debts and to build or upgrade the family home. Further savings may then be used to rent or purchase land as a source of family income. There was an upsurge of land purchases by TKI/TKW during the financial crisis of the late 1990s as the rupiah crashed in value. Currently, however, overseas migrant workers cannot easily afford to buy land because of high and rapidly rising land prices.

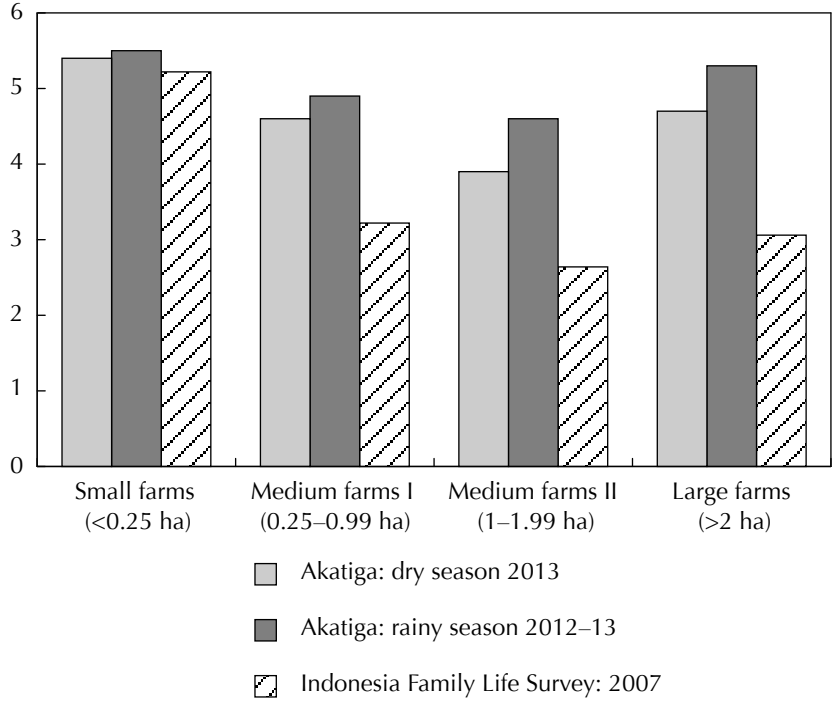
As noted above, the large landholdings in these rice-producing villages do not result in large farms. The largest landowners generally spend their time pursuing various high-return non-farm activities and are not interested in farming the land themselves. For them, the land is a source of income through rent, and of speculation through its rising value. Many are village officials, and/or own businesses on the upstream and downstream sides of agriculture, leaving tenants to cultivate their land.

SMALL FARMS: PRODUCTIVE OR UNDERPRODUCTIVE?

Although it is not a primary focus of the present chapter, it needs to be noted that the small (often tiny) farm sizes typical of rice production are not a barrier to high productivity per hectare. Elsewhere, we have analysed the farm size–productivity relationship in some detail for the 12 villages we studied in 2013 (Wati and Chazali 2015). Both secondary data and our own survey data support the conclusion that larger farms do not have higher per-hectare yields than smaller ones. Indeed, our results suggest that the farm size–productivity relationship is an inverse one, as has been found in many other countries since the 1970s (World Bank 1975; Lipton 2009). Summary data on this subject from our sample sur-

8 TKI = *tenaga kerja Indonesia* (Indonesian migrant workers); TKW = *tenaga kerja wanita* (women migrant workers).

Figure 12.1 Comparison of productivity by size of landholding (tonnes per hectare)



Source: Indonesia Family Life Survey (RAND Corporation and Survey METRE 2007); Akatiga field survey, 2013.

veys, and from the 2007 round of the large-scale Indonesia Family Life Survey (IFLS), are shown in Figure 12.1.

LANDLESSNESS AND NEAR-LANDLESSNESS

As Table 12.4 shows, near-landlessness and landlessness are quite common in many of the sample villages. The highest proportion of pure tenants and landless worker households is found in Cisari (Karawang district, West Java), together amounting to 76 per cent of all households. In the South Sulawesi villages, on the other hand, levels of absolute landlessness are very low, with almost all households having access to some farmland.

In most of the villages, respondents reported that the numbers of landless worker households were increasing, but that work opportuni-

ties in agriculture for those households were not increasing. In Wanakerta (Indramayu district, West Java), opportunities for casual workers to undertake hired farm work are declining as landowners adopt new 'closed-shop' modes of managing their land, preferring to rely on just one or two trusted workers to do all of the pre-harvest work. In Cisari, in contrast to many other villages, the numbers of landless farm-worker households are declining as younger members of landless households shift to non-farm employment, particularly in factories; in this village, hired farm workers mainly come from outside the village.

In both villages in Indramayu district (Karang and Wanakerta), where agriculture is still the dominant sector, many members of landless households are working overseas as TKI/TKW. As already noted, their remittances and savings are a source of capital accumulation for their families, allowing some landless households to rent or purchase land and become small farmers.

MECHANISMS OF ACCESS TO LAND

Inheritance

As would be expected, inheritance is the most common way in which farm households obtain land, though sometimes in very small parcels due to subdivision. Normally, ownership rights pass to the heirs only after the parents die. While the parents are alive, the children may help with production and management but the parents will still make the major decisions about the timing of planting and harvest, crop choice and so on. Some parents fear that their children may sell the land if they hand over full ownership, and this is one reason why full transfer of ownership rights during the owner's lifetime, or gifting (*hibah*), is not common.

Inheritance patterns formally tend to favour the male heirs, especially in strict Muslim areas, following what villagers call the 'Muslim' rule by which male heirs receive twice as much as female heirs. However, even where this rule is supposedly followed, it is common for the division to be more equal in practice. In some cases, female children who remain in the village to care for their parents may inherit not only the house but also a larger share of the land than their siblings (whether arranged informally or given as *hibah* by the parents).

Because young adults in smallholder households are generally not given full access to land while their parents are alive, many of them turn to non-farm occupations inside or outside the village. Such decisions should not be seen as decisions for life. Many young people who have left their villages plan to save money and return later—when they can afford

to rent or purchase land, or when inherited land finally becomes available. Many innovative farmers are to be found among these returned migrants.[9]

Purchase

Normally the ability to purchase land is restricted to wealthy farmers and landowners, and to those who can earn high incomes in the non-farm sector, such as civil servants, armed forces/police, overseas migrant workers, large-scale traders and those with agro-input and agro-processing businesses. Land prices vary with land quality and location, but in the last decade have risen sharply in most villages, particularly in West and Central Java. In Karang (Indramayu district, West Java) land prices have risen sharply over the past decade, from Rp 5,000–10,000 per square metre for *sawah* in 2002 to as much as Rp 100,000 per square metre by the end of 2013. This was partly because Pertamina decided to construct a new coal-fired power plant in the area, and a road leading to it. In Wetanan (Cilacap district, Central Java) land prices doubled between 2008 and 2013, to Rp 50,000–100,000 per square metre, mainly due to land purchases by absentee owners.

Renting

Renting-in land is normally restricted to farmers with capital, as rent has to be paid at the time of accessing the land (unlike in the case of share tenancy). Land is normally rented for periods of one to two years. High land rents have encouraged some moderately large landowners to rent out their land rather than manage it themselves; the tenant bears all production costs and risks, while the landowner can use the cash to invest in other enterprises, to finance a younger family member's migration as TKI/TKW or to resolve a financial problem.

Pawning (*gadai*)

Land pawning or mortgage (*gadai*) agreements usually cover a period of one to three years. The landowner transfers land-use rights for an agreed period to the moneylender, who may rent or sharecrop out the land. Normally no interest is charged when the loan is redeemed, as the difference between the amount loaned and the moneylender's income from

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9 More detailed discussion of young people's access to land and employment preferences, based on research in the 12 villages studied in 2013, can be found in Herawati and Nugraha (2015) and (in English) in Akatiga and White (2015).

the land constitutes an implicit interest rate. In Central Java, however, we found that interest of 20 per cent was being charged. In some cases the interest rates on pawning agreements are based on current rice prices, which tend to rise over time.

Share tenancy (*bagi hasil*)

After ownership, share tenancy is the most common form of access to land in all the sample villages—far more common than renting or pawning. This means, in turn, that landlord–share tenant relations are the dominant form of agrarian labour relations and surplus labour transfer, in addition to simple farmer–labourer relations.

In share tenancy agreements, the tenant farmer generally bears a greater share of the production risks than the owner. There are two main types of share tenancy agreements: half-share (*maro*) and one-third share (*mertelu*). In *maro* agreements, the most common type, the owner and the tenant each take half the harvest after deduction of (non-labour) production costs and harvest-related wages. The landowner thus bears half the cost of seed (except in West Java), tractor hire, fertilisers and pesticides. In *mertelu* agreements, the tenant bears almost all the production costs but takes two-thirds of the harvest. The landowner only bears the cost of seed and herbicides (and in South Sulawesi, not even these). Thus, if the harvest should fail, the cultivator bears almost all the loss. In both *maro* and *mertelu* arrangements, there is some local variation in the detail between villages.

As Table 12.4 indicates, in all villages there are significant numbers of farmers who do not own the land they cultivate or own only part of it. In Walian (Wajo district, South Sulawesi), for example, tenant farmers comprise 59 per cent of all households, and part owner, part-tenants another 25 per cent. On the one hand, the resulting massive transfer of value from tenant farmers to landowners has negative implications for social efficiency; on the other hand, the fact that large landholdings are parcelled out to tenant farmers (rather than being managed as large capitalist farms) could be said to favour the rural poor, by maintaining the pattern of small-scale farming, in the absence of agrarian reform and 'land-to-the-tiller' policies to transfer land from landlowners who are not farming the land to tenant farmers.

Public (village-owned) farmland and its uses

In all 20 villages, some portion of agricultural land is the property of the village rather than of private owners. This includes salary land (*tanah bengkok*) used to generate income to pay village officials, village treasury

land (*tanah kas desa*) and welfare land (*tanah kemakmuran*). In some parts of Java such lands may comprise up to 20 per cent of all *sawah*, and often the best-quality *sawah*. The way in which these different types of land are allocated, and the proceeds from them, can have significant implications for poverty, income distribution and access to farmland.

In most villages in Java, Sumatra and Sulawesi, where village government was already relatively well established before government budgets for village administration were decentralised to the village level, the village owns some public land that is managed by the village government. Part of this public land is used to finance village administration and part is used for public utilities. In many cases ownership of the land assigned to public utilities has gradually passed to a sectoral agency at the district level or higher: land allocated for an elementary school gradually becomes the property of the Ministry of Education, land used for roads becomes the property of the Ministry of Public Works and so on. The land set aside to finance village administration is normally rented out to the villagers. In villages where some degree of accountability exists, this land still exists, but in villages where the village head is powerful and unaccountable (as in one of our sample villages in Sulawesi), some of this land may become the de facto private land of the head and the head's family.

In Sidosari (Kebumen district, Central Java), the public land once used to fund salaries (*tanah bengkok*) is now being used for welfare purposes.[10] It is rented under a more egalitarian arrangement to the landless or near-landless. The land is allocated by lottery each year at rental prices varying from Rp 1 million to Rp 15 million per hectare, which can be paid off in three-monthly instalments. As noted earlier, in the same village a village regulation prevents the largest landowner from buying more land or acquiring more land through pawning agreements.

THE RURAL NON-FARM SECTOR, LANDHOLDINGS AND INCOME INEQUALITY

Households in all landholding strata are active in non-farm activities, as is the case in Southeast Asian societies generally (Rigg 2001; Rigg and Vandergeest 2012). In Indonesian rice-producing villages this is nothing new: the historical record provides substantial evidence of 'a widespread and lively involvement of rural people in non-agricultural pursuits

10 This arrangement was introduced by the district government several years before the enactment of Law 6/2014 on Villages, when block grants for village administration and investment were still handled by district governments.

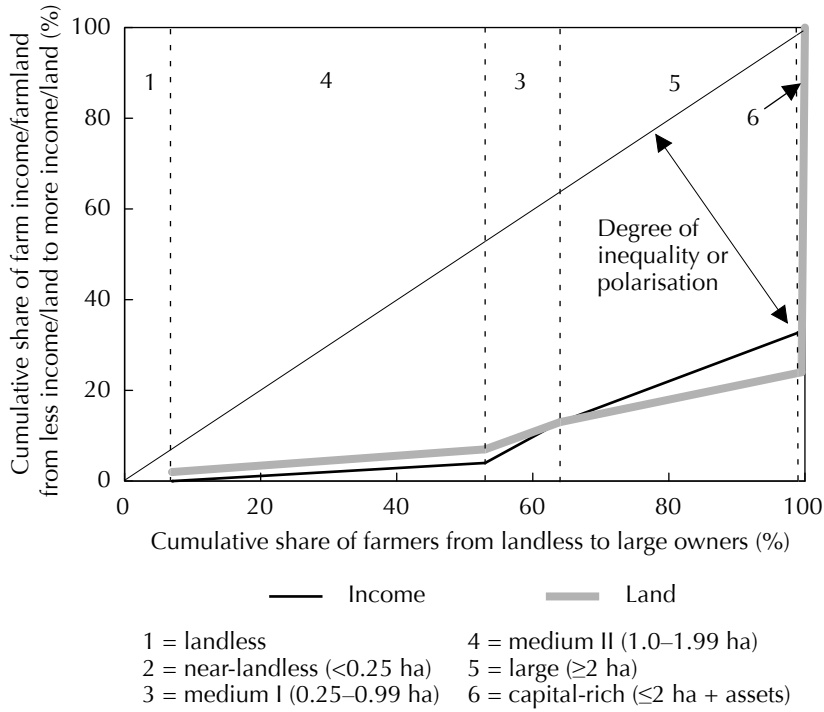
throughout the colonial period and before' (Alexander, Boomgaard and White 1991: 1).

In our sample villages, the types of non-farm involvement and levels of income depend on various factors, among them access to capital, education and gender. Members of landless farm-worker households can earn additional income in local (or nearby) activities—as factory workers, construction workers, launderers, workers in small-scale food and craft enterprises or, in some cases, as miners. Their earnings from these activities may be higher than the income of the operators of small farms. At the other end of the scale, large landowners and farmers often invest heavily in agriculture-linked non-farm activities that require substantial capital and provide high returns, such as trade, agro-processing (for example, rice mills) and equipment supply (renting out tractors, combine harvesters and so on). These are the households that we have classified as 'capital-rich farmers'. Although small in number, they control a large slice of the rural economy through their diversified land- and non-land-based investments. Some of them also have lucrative jobs in village government or the civil service; they are 'the masters of the contemporary countryside' (Lenin, cited in White 1989: 17).

The relationships between patterns of land control, household income distribution and capital accumulation (which have been a matter of debate since the 1980s) seem to have undergone some changes, not always following the 'classic' model in which farm and non-farm incomes tend to be positively correlated (as found in the Agro-Economic Survey villages studied by White and Wiradi 1989). While this pattern is still found in some villages, a number of other patterns can also be discerned.

In the South Sulawesi and Lampung districts where use of the combine harvester is expanding, the capital-rich farmers who dominate the economic landscape in and beyond their own villages are certainly also accumulating land. This may no longer be their main source of wealth, however; many have a virtual monopoly over trade and other non-farm economic activities in their areas, beyond their own villages. In Sulawesi, inherited land was the original source of capital accumulation for the capital-rich farmers, while in Lampung it was more likely to be businesses as traders in fertiliser, other farm inputs and daily needs. Subsequently, in both regions, the capital-rich farmers have expanded their activities to include livestock trading, ownership of rice mills, shops selling agro-inputs and household needs, hand-weaving enterprises (operated on a putting-out basis) and ownership of tractors and combine harvesters for hire. Combine harvesters, currently a popular investment costing some Rp 400 million per unit, are rented out to farmers (generally those with more than 0.5 hectares of land). The introduction of combine harvesters poses a threat to harvesting employment opportunities, with

Figure 12.2 Lorenz curves of income and land inequality, Walian village



a single machine replacing around 30 person-days of wage employment per hectare per harvest.

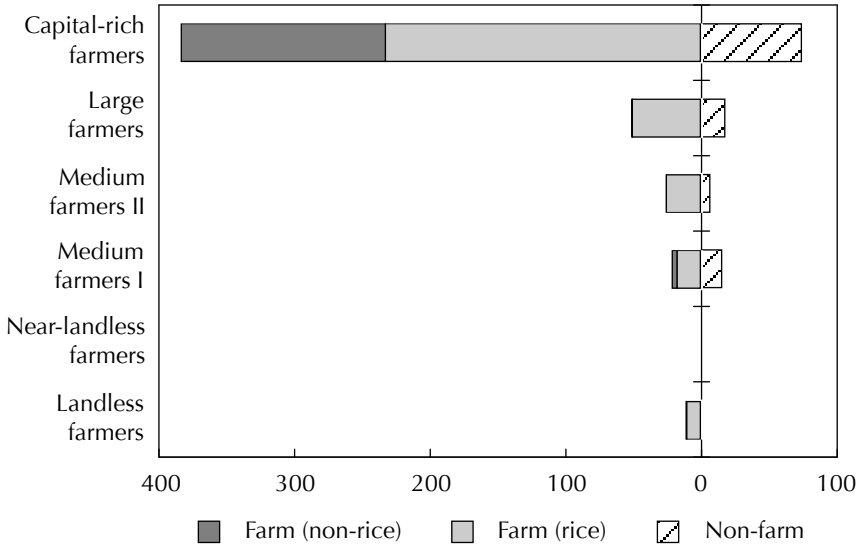
In the remainder of this section we provide illustrations of contrasting farm–non-farm income configurations (and resulting patterns of inequality), in relation to farm size.

Cases of extreme income inequality

Villages providing examples of extreme inequality are Walian (Wajo district, South Sulawesi), Cisari (Kerawang district, West Java) and all villages where combine harvesters are present (the eight villages studied in 2015). In these villages two or three families have income far higher than the village average, and their businesses have expanded beyond rice production and beyond their own villages. The income of these families ranges from Rp 400 million to more than Rp 2 billion (approximately $32,000–160,000) per year.

Figure 12.2 shows Lorenz curves of income and land inequality, and Figure 12.3 the levels of farm and non-farm income, for the landholding

Figure 12.3 Farm and non-farm income by landholding status, Walian village (Rp million)



strata in Walian village, which is an extreme case of 'one family takes (nearly) all'.[11]

In Walian 67 per cent of the land belongs to one family, which takes a 72 per cent share of total income in the village, while 76 per cent of farmers are landless or near-landless (owning less than 0.25 hectares). Half of the richest family's income is derived from rice agriculture (mainly in the form of rent), one-third from other agriculture and fisheries, and the rest from non-farm income. This family is descended from old aristocratic families that have traditionally monopolised a large part of the village's land.

The classic type of farm–non-farm income relationship

Mulyoharjo village in Kebumen district (Central Java) and Dawungan village in Kerawang district (West Java) are examples of the 'classic' type of positive correlation between farm and non-farm incomes. In this classic type, income inequality and land inequality are high but the richest

11 The Lorenz curve is the graphical representation of wealth distribution: 'The straight diagonal line represents perfect equality of wealth distribution; the Lorenz curve lies beneath it, showing the reality of wealth distribution' (www.investopedia.com/terms/l/lorenz-curve.asp).

Figure 12.4 Lorenz curves of income and land inequality, Dawungan village

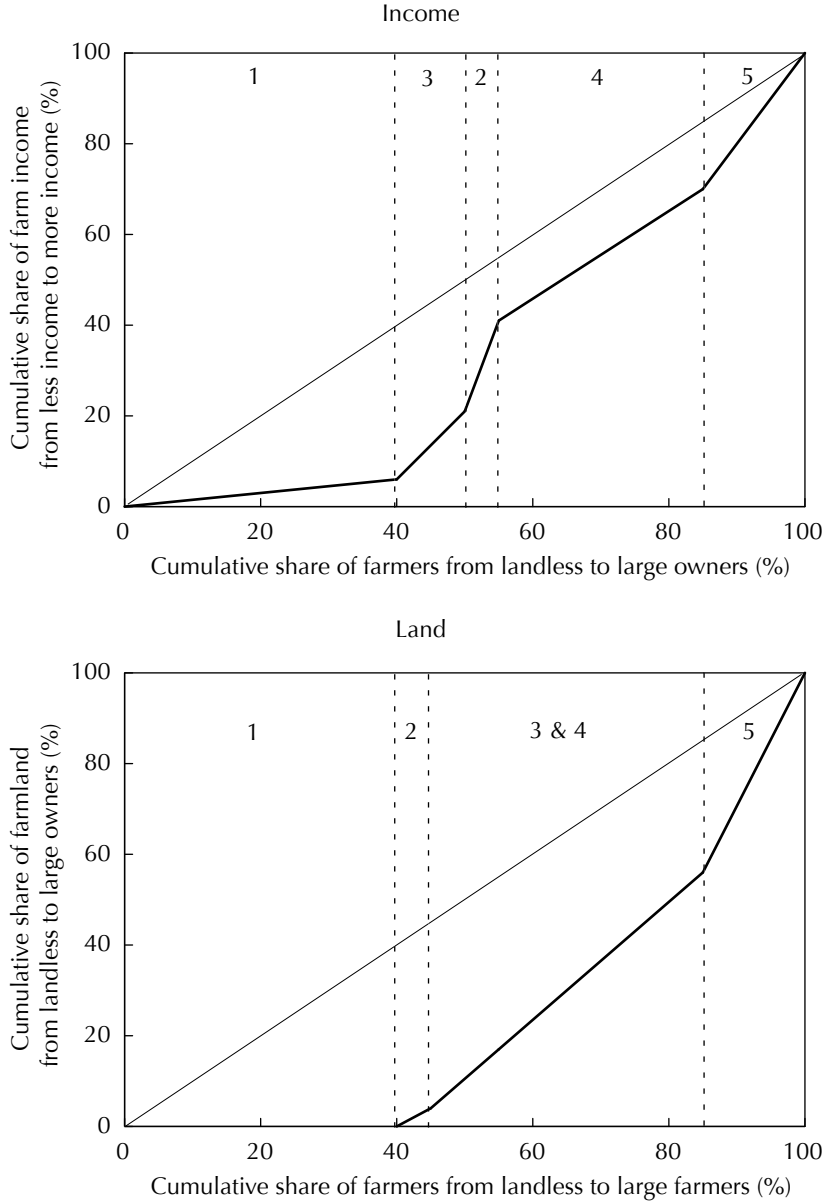
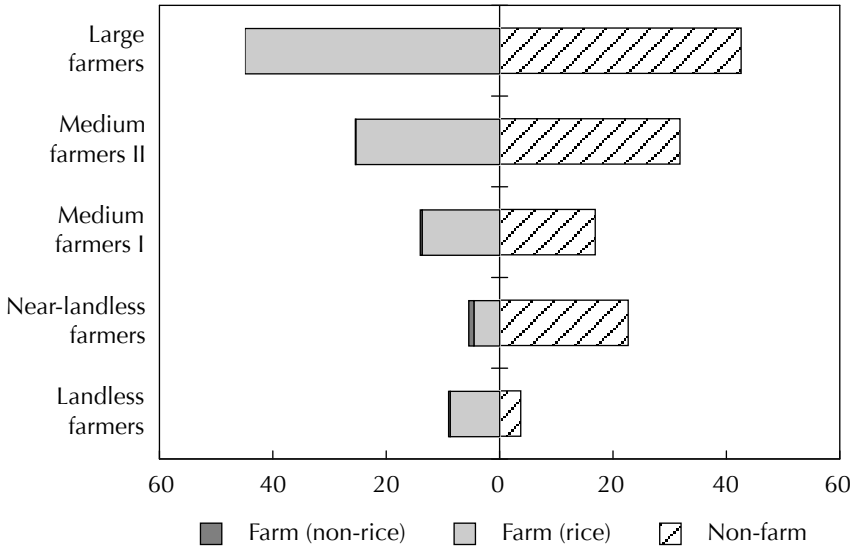


Figure 12.5 Farm and non-farm income by landholding status, Dawungan village (Rp million)



two or three families take only around 20 per cent of the village's land and income. Land is clearly still a main source of capital accumulation; the commercialised surpluses available from large landholdings are invested in a variety of non-farm activities, which themselves provide surpluses that may be reinvested in further accumulation of land (White and Wiradi 1989: 298). Figure 12.4 shows Lorenz curves of income and land inequality, and Figure 12.5 the levels of farm and non-farm income, for the landholding strata in Dawungan village (Kerawang district, West Java).

A case of a more egalitarian farm–non-farm income relationship

There are also villages where farm and non-farm incomes are to some extent inversely related, thus partly balancing each other out and producing a relatively egalitarian overall pattern of income distribution. This is similar to the 'East Asian' pattern of income distribution found in Japan, Taiwan and South Korea in the post-land reform period of the 1970s and 1980s (see, for Japan, Kada 1986).

Figure 12.6 shows Lorenz curves of income and land inequality, and Figure 12.7 the levels of farm and non-farm income, for the landholding strata in Sidosari village (Kebumen district, Central Java). As shown in Figure 12.6, Sidosari has substantial inequality in land ownership but less

Figure 12.6 Lorenz curves of income and land inequality, Sidosari village

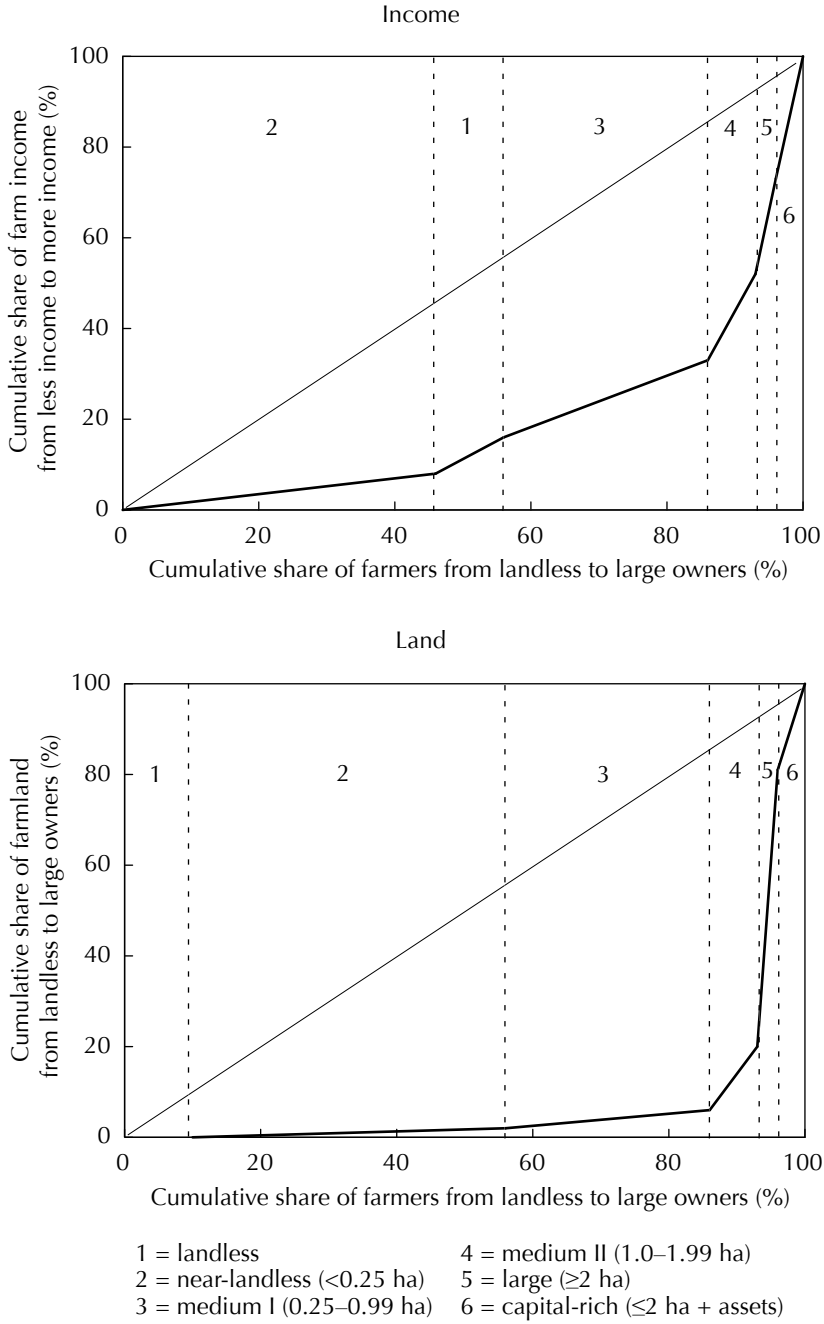
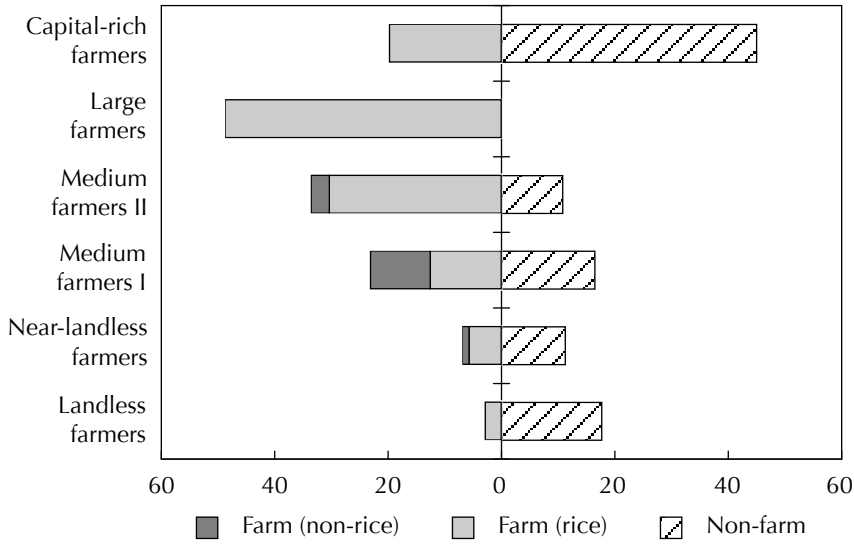


Figure 12.7 Farm and non-farm income by landholding status, Sidosari village (Rp million)



inequality in income. In this village, some landless and land-poor households are given access to the village's welfare land (*tanah kemakmuran*) and also engage in non-farm activities, which partly counterbalances the inequalities in farm income. Nevertheless, a few capital-rich farmers still have the largest non-farm investments and incomes (Figure 12.7).

CONCLUSIONS

While this study is only a first attempt to fill a gap in available research, our findings point to some general policy conclusions. We first consider the general issue of small farm size in Indonesia, then the implications of emerging differentiation and inequality in smallholder rice-farming communities.

As we have seen from secondary data, more than half of all Indonesian farm households (and three-quarters of all farm households in Java) have farms of less than half a hectare, making them marginal farmers (*petani gurem*) as officially defined by BPS. This worries many agricultural economists, technocrats and policy-makers—together with members of the middle classes and elite—who believe firmly that large-scale agriculture must be more 'efficient' than small-scale agriculture, and follow the World Bank (2008) in arguing for large-scale models of agricultural

growth (see, for example, Pakpahan 2010, 2011). Agricultural economists in the respected Bogor Agricultural University (Institut Pertanian Bogor, IPB) often refer to the formula developed by agronomists around 60 years ago in preparation for the 1960 Basic Agrarian Law, but still widely cited, which states that to provide a decent income, the minimum size of a rice farm, on irrigated land, should be 2 hectares (an area presently enjoyed by less than 4 per cent of all farm households). Linked to this is the common (but incorrect) assumption that agriculture is characterised by economies of scale; for nearly all crops, economies of scale (where they exist) are to be found in the upstream and downstream activities, not on the farm itself. The '2-hectare minimum' formula is based on some assumptions that were never valid (such as that rice farmers' livelihoods are based only on rice- and farm-based income) and others that are no longer valid (such as those on the length of the growing season, cropping intensities and expected yields, all of which have changed dramatically with the Green Revolution). Otherwise, how can we explain the fact that so many Indonesian rice farmers with only half a hectare, and some with even one-fifth of a hectare, have good permanent houses, televisions and motorbikes, and send their children to university? In many parts of Java nowadays, a rice farm of only 0.1 hectares, intensively cultivated with two crops a year, produces enough rice to feed a family.

The idea that larger farms must be more efficient (in spite of evidence that smaller farms attain the highest yields) has underpinned various attempts to establish large-scale rice estates outside Java (during the late colonial period, the Sukarno and Suharto periods and the current *reformasi* era). All of these, to date, have been resounding failures. Expansion to more areas outside Java may be an option, but it is a risky one, and should be considered only as a means to complement rather than replace small-scale production in Java and other fertile, densely populated areas.

The first major implication, then, is that rather than promoting the elimination of small farms and their replacement by large-scale industrial farming, policies should aim to support smallholders after some decades of relative neglect. Though becoming a farmer is not the first choice of the young rural generation, absolute levels of agricultural employment continue to grow, and many young out-migrants later return to the rural areas and to farming. When combined with other types of employment, small-scale agriculture still provides reasonable employment opportunities compared with other available options. Small-scale rice production is not an inferior opportunity if supported with appropriate technology and integrated water, plant nutrition and pest management (Mueller et al. 2012), and if farmers can be sure of good prices, and of timely provision of information and inputs through the improved functioning of the national food logistics agency (Bulog) and other institutions.

Our second issue for policy reflection concerns the evidence of differentiation and inequality in landholdings within the smallholder rice sector. As we have seen, these inequalities have reached alarming levels in some villages. While further research is needed on the detailed mechanisms and motives underpinning land concentration, our impression is that it has taken on an increasingly speculative dimension, and is driving patterns of land control further than ever from the 'land-to-the-tiller' model, which is the best way to maximise the social function of land. Land concentration, as we have seen, results not in large farms but in a proliferation of share tenancy; if allowed to continue it will result in the transformation of Indonesia's small-scale rice farmers into a nation of sharecroppers. Speculative investment in landed property (where the purpose is not to farm the land but to earn rent from it, and to profit from its rising value) is unproductive investment. It inflates land prices beyond the reach of ordinary people; it generates high levels of inequality in society and perpetuates it through inheritance (Harvey 2011: Ch. 7). A high proportion of low-income landless and marginal farmers and share tenants on one side, and two to three families taking half or more of a village's total income on the other side, is not a good basis for further development. This kind of inequality is bad for the economy, for social efficiency as described at the beginning of this chapter, and for social cohesion.

An alternative land tenure regime, better suited to present and future challenges and the needs of smallholder farming communities, would prioritise smallholder farming and 'land-to-the-tiller' as a general principle; actively discourage speculation and accumulation in land; provide the users of land with secure tenure (but not necessarily outright ownership rights); ensure and protect women's equal rights to land; enable young would-be farmers to access land while they are still young; be flexible and adaptable to local conditions; and finally, not require a huge national or regional bureaucracy to implement and enforce these principles.[12]

As Indonesian administrative regulations move in the direction of greater autonomy for villages to manage their own affairs, there is increasing scope for local-level adjustments to current land tenure structures. The 'Sidosari model' (Figures 12.6 and 12.7) could be used to help the landless and near-landless gain access to village public land, through more appropriate tenancy arrangements, and to limit absenteeism and excessive concentration of ownership. Part of the block grants that villages now receive under Law 6/2014 on Villages—amounting to more

12 These points are discussed in greater detail in White (forthcoming).

than Rp 1 billion per village per year—could be used to increase the stock of public land; targeted allocation of use rights over that land would be a means to give poor people, women household heads and the young a better chance of obtaining a piece of farmland. Similarly, village governments and farmer groups should be able to insist on better support for smallholder production, and reject inappropriate technologies (such as combine harvesters) introduced by the Ministry of Agriculture that benefit only a minority of the richest families and jeopardise harvesting employment opportunities (Wati and Chazali 2015).

REFERENCES

Akatiga and B. White (2015) 'Would I like to be a farmer?', *Inside Indonesia*, 120(April–June).

Alexander, P., P. Boomgaard and B. White (1991) 'Introduction', in P. Alexander, P. Boomgaard and B. White (eds) *In the Shadow of Agriculture: Non-farm Activities in the Javanese Rural Economy, Past and Present*, Royal Tropical Institute, Amsterdam: 1–13.

White, B. (2015) 'Meneliti masalah petani dan pangan pada tingkat lokal: pengantar Studi Kemandirian Pangan Akatiga' [Investigating farming and food problems at the local level: introduction to Akatiga's Food Autonomy Study], *Jurnal Analisis Sosial*, special issue, 'Pertanian Pangan: Mitos dan Realita Pertanian Padi di Indonesia' [Food Agriculture: Myth and Reality of Rice Agriculture in Indonesia]: 1–10.

Bachriadi, D. and G. Wiradi (2011) *Enam Dekade Ketimpangan: Masalah Penguasaan Tanah di Indonesia* [Six Decades of Inequality: Land Tenure Problems in Indonesia], ARC, Bina Desa and KPA, Bandung.

Bernstein, H. (2010) *Class Dynamics of Agrarian Change*, Fernwood Publishing, Halifax, and Kumarian Press, Sterling, VA.

Berry, A. (2011) 'Review essay: the case for redistributional land reform in developing countries', *Development and Change*, 42(2): 637–48.

BPS (Badan Pusat Statistik) (2003) *Sensus Pertanian 2003: Angka Propinsi Hasil Pendaftaran Rumah Tangga (Angka Sementara)* [Agricultural Census 2003: Results of Household Registration by Province (Preliminary Figures)], Statistics Indonesia (BPS), Jakarta.

BPS (Badan Pusat Statistik) (2013) *Sensus Pertanian 2013: Angka Propinsi Hasil Pendaftaran Rumah Tangga (Angka Sementara)* [Agricultural Census 2013: Results of Household Registration by Province (Preliminary Figures)], Statistics Indonesia (BPS), Jakarta.

Collier, W.L., Soentoro, G. Wiradi and Makali (1974) 'Agricultural technology and institutional change in Java', *Food Research Institute Studies*, 13(2): 169–94.

De Koninck, R., J. Rigg and P. Vandergeest (2012) 'A half century of agrarian transformations in Southeast Asia, 1960–2010', in J. Rigg and P. Vandergeest (eds) *Revisiting Rural Places: Pathways to Poverty and Prosperity in Southeast Asia*, NUS Press, Singapore: 25–37.

Franke, R.W. (1972) 'The Green Revolution in a Javanese village', PhD thesis, Harvard University, Cambridge, MA.

Hart, G. (1986) *Power, Labor and Livelihood: Processes of Change in Rural Java*, University of Caifornia Press, Berkeley, CA.

Harvey, D. (2011) *The Enigma of Capital and the Crises of Capitalism*, Profile Books, London.

Hayami, Y. and M. Kikuchi (1981) *Asian Village Economy at the Crossroads: An Economic Approach to Institutional Change*, Tokyo University Press, Tokyo.

Herawati, R. and Y. Nugraha (2015) 'Menguak realitas orang muda sektor pertanian di perdesaan [Unveiling the reality of rural youth in agriculture], *Jurnal Analisis Sosial*, special issue, 'Pertanian Pangan: Mitos dan Realita Pertanian Padi di Indonesia' [Food Agriculture: Myth and Reality of Rice Agriculture in Indonesia]: 27–40.

Kada, R. (1986) 'Off-farm employment and the rural–urban interface in Japanese economic development', in R. Shand (ed.) *Off-farm Employment in the Development of Rural Asia*, Volume I, National Centre for Development Studies, Australian National University, Canberra: 75–94.

Kasryno, F. (ed.) (1984) *Prospek Pembangunan Ekonomi Pedesaan Indonesia* [Prospects for Economic Development in Rural Indonesia], Yayasan Obor Indonesia, Jakarta.

Lipton, M. (2009) *Land Reform in Developing Countries: Property Rights and Property Wrongs*, Routledge, London and New York, NY.

Mueller, N.D., J.S. Gerber, M. Johnston, D.K. Ray, N. Ramankutty and J.A. Foley (2012) 'Closing yield gaps through nutrient and water management', *Nature*, 490(11 October): 254–7.

Pakpahan, A. (2010) 'Gurem' [Marginal farmers], 10 February. Available at http://www.aguspakpahan.com/index.php/web/pdfTulisan/26/3/GUREM

Pakpahan, A. (2011) 'Kelangkaan sumber daya lahan Indonesia' [Scarcity of land resources in Indonesia], *Koran Tempo*, 20 December. Available at http://www.aguspakpahan.com/media/files/buku/kelangkaan_lahan_Indonesia_20_12_2011_011.pdf

Pincus, J. (1996) *Class, Power and Agrarian Change: Land and Labour in Rural West Java*, St Martin's Press, New York, NY.

Rand Corporation and Survey METRE (2007) 'The Indonesia Family Life Survey (IFLS), round 4'. Available at http://www.rand.org/labor/FLS/IFLS/ifls4.html

Ribot, J. and N. Peluso (2003) 'A theory of access', *Rural Sociology*, 68(2): 153–81.

Rigg, J. (2001) *More than the Soil: Rural Change in Southeast Asia*, Pearson Education Ltd, Harlow.

Rigg, J. and P. Vandergeest (eds) (2012) *Revisiting Rural Places: Pathways to Poverty and Prosperity in Southeast Asia*, NUS Press, Singapore.

Saith, A. (1986) *The Rural Non-farm Economy: Policy and Processes*, International Labour Organization, Bangkok.

Wati, H. and C. Chazali (2015) 'Sistem pertanian padi Indonesia dalam perspektif efisiensi sosial' [Indonesian rice farming from a social efficiency perspective], *Jurnal Analisis Sosial*, special issue, 'Pertanian Pangan: Mitos dan Realita Pertanian Padi di Indonesia' [Food Agriculture: Myth and Reality of Rice Agriculture in Indonesia]: 41–56.

White, B. (1989) 'Problems in the empirical analysis of agrarian differentiation', in G. Hart, A. Turton and B. White (eds) *Agrarian Transformations: Local Processes and the State in Southeast Asia*, University of California Press, Berkeley, CA: 15–30.

White, B. (2013) 'Does Indonesia need corporate farms? Reflections on modernization, efficiency, and the social function of land', *Journal of Rural Indonesia*, 1(1): 1–14.

White, B. (forthcoming) 'Agrarian reform and smallholder rights in Indonesia: alternatives to corporate, customary and private ownership', in I. Westendorp (ed.) *Legal Aspects of Land Rights and the Use of Land in Africa, Asia and Europe*, Intersentia, Cambridge.

White, B. and G. Wiradi (1989) 'Agrarian and non-agrarian bases of inequality in nine Javanese villages', in G. Hart, A. Turton and B. White (eds) *Agrarian Transformations: Local Processes and the State in Southeast Asia*, University of California Press, Berkeley, CA: 266–302.

World Bank (1975) 'Land reform: sector policy paper', World Bank, Washington, DC.

World Bank (2008) *World Development Report 2008: Agriculture for Development*, World Bank, Washington, DC.

PART 5

Large-scale land acquisitions and smallholder development

13 Industrial plantations and community rights: conflicts and solutions

Afrizal and Patrick Anderson

The right of indigenous peoples to give or withhold their free, prior and informed consent (FPIC) to developments that will affect them is articulated in the United Nations Declaration on the Rights of Indigenous Peoples, which was passed with a resounding majority by the UN General Assembly in September 2007. Voluntary industry standards for timber (set up by the Forest Stewardship Council) and oil palm (through the Roundtable on Sustainable Palm Oil) recognise the necessity for both indigenous peoples and local communities to enjoy the right to give or withhold their free, prior and informed consent. Following pressure from customers and investors, many of the biggest companies in these sectors in Indonesia have committed to follow these standards, even as Indonesia's Ministry of Foreign Affairs continues to insist that the nation does not have any indigenous peoples, and that the Declaration on the Rights of Indigenous Peoples therefore does not apply to Indonesia.[1] The voluntary industry commitments to respect community rights, combined with advocacy by civil society, have put pressure on the Indonesian government to provide greater recognition of the rights of local communities and indigenous peoples.

1 In its response to the recommendation of the UN Human Rights Council in 2012 that Indonesia ensure that the rights of indigenous peoples are respected, Indonesia responded: 'The Government of Indonesia supports the promotion and protection of indigenous people worldwide. Given its demographic composition, Indonesia, however, does not recognise the application of the indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples in the country' (UN Human Rights Council 2012: 3).

Companies that sign up to the voluntary industry standards are obliged to respect customary (*adat*) land rights and the right to FPIC, and to attempt to resolve any outstanding conflicts that impinge on those rights. Both companies and non-government organisations have lobbied the Indonesian government to make uniform environmental and social commitments mandatory for all concession holders. There are indications that national regulations on important issues such as the identification and protection of environmentally significant areas, the right to FPIC and access to conflict resolution mechanisms are being strengthened due to these advocacy efforts (Dewan Kehutanan Nasional and UN-REDD Programme Indonesia 2011). In 2015, for example, both the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Environment and Forestry issued regulations that provide much greater scope for communities affected by plantations to have their rights to land recognised.

For both companies and governments seeking to acquire land, the process of obtaining consent from community landholders is a central issue (Colchester et al. 2006; Afrizal 2007, 2010, 2013; Colchester and Chao 2013). The question of consent concerns recognition of and respect for a community's rights to land, and is particularly important given the rapid expansion of pulp and paper and oil palm plantations across Indonesia. In the absence of a strong community land rights regime enforceable by law, however, involuntary land acquisition remains the norm in Indonesia, for both companies and governments (see Chapter 3 by Bedner). Studies in this field consistently show that land grabbing for plantations generates long-lasting disputes between communities and corporations (Colchester et al. 2006; Afrizal 2007). A study of oil palm concessions in 2012, for example, found that none of the companies investigated had informed the farmers and communities that, by agreeing to plantation development on their lands, they would be relinquishing all community rights over those lands (Colchester and Chao 2013).

This chapter considers the extent to which industry commitments provide an alternative to or complement state laws and regulations protecting community rights to land. Industrial plantations of oil palm and pulpwood already cover some 15 million hectares in Indonesia, most of it overlaying the lands of customary communities. Very few communities, however, have been able to obtain secure tenure over their land or to negotiate benefit-sharing agreements with the companies that have imposed plantations on them. In the coming decade, the oil palm and pulpwood industries plan to triple their plantation areas, which could lead to them occupying some 20 per cent of Indonesia's land area. Without stronger efforts to respect community rights and resolve conflicts,

thousands more villages and millions more small farmers will lose access to their lands and associated livelihoods.

In this chapter, we examine five cases of conflict between communities and plantation companies—three involving oil palm plantations and two involving pulpwood plantations—and explore how communities have made use of company commitments to respect the right to FPIC as they have attempted to resolve those conflicts. We argue that international standards for FPIC and conflict resolution do provide a point of leverage for communities to have their rights to land respected by companies, and for NGOs and companies to lobby government to provide greater security of land tenure and more dispute resolution options for communities. However, the five case studies also reveal the limits of companies' willingness to respect community rights, and of communities' ability to pressure companies to behave fairly. For a community to assert its rights requires so much effort and recourse to expert support that few affected communities have so far been able to obtain redress. Although companies say they are committed to following international standards that are more stringent than Indonesian law in terms of recognition of customary rights to land, in practice they tend to limit their endeavours to meeting existing Indonesian regulations and law. This indicates that communities and NGOs need to step up their efforts to make companies take their commitments seriously, for instance, by exposing their practices to greater scrutiny from international customers and investors. New national government regulations that strengthen support for community rights and provide more avenues for conflict resolution should also help to deepen implementation of company commitments.

FPIC IN INTERNATIONAL NORMS

In 2012, the Food and Agriculture Organization (FAO) of the United Nations issued its Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012; Kropiwnicka 2012: 12; Colchester and Chao 2013: 13). The outcome of two years of consultations and negotiations involving governments, the private sector, civil society and academia, the guidelines were endorsed by 194 national governments. They urge governments and businesses to 'recognize and respect all legitimate tenure right holders and their rights' and to 'safeguard legitimate tenure rights against threats and infringements'. An important principle in the guidelines is the right of communities to be consulted about and to participate in decision-making processes that will affect them. The guidelines regard protection of land rights, including customary-based land rights, as the

social basis of sustainable development, supported by 'proper implementation of the Voluntary Guidelines at national or local level' (Kropiwnicka 2012: 10).

NGOs have also worked to establish standards for many different agricultural sectors in order to set boundaries on company behaviour and ameliorate the environmental and social effects of their activities. One such organisation is the Roundtable on Sustainable Palm Oil (RSPO), which brings together palm oil consumer companies, investors and environmental and social NGOs. Established in 2003 in response to international concern that palm oil production was a major cause of deforestation and had involved human rights violations, the RSPO has sought to bring industry practices up to international norms, going beyond the limitations of national legal frameworks (RSPO 2013).

The RSPO standard requires oil palm plantation companies to recognise and respect existing land uses and forms of land ownership, including customary tenure, in the areas they wish to develop. To prevent land grabbing, the RSPO requires growers to respect the right of affected communities to give or withhold their free, prior and informed consent to proposed developments that will affect them.[2] To support the validity of their claims, companies must hold documented evidence of land-use rights over their plantation areas.

The voluntary guidelines developed by the RSPO and the FAO with the support of non-government organisations are based on international norms and values. This is especially important in circumstances 'where secure rights are absent or insufficiently enforced' (McCarthy 2012: 1,875). In the words of McCarthy (2012: 1,875), NGOs turned to voluntary guidelines in order 'to have a set of principles and criteria adopted broadly in line with international law and widely promulgated concepts'.

The largest plantation companies in Indonesia have committed to respect the right of affected communities to FPIC and work to resolve existing conflicts with communities through mutually agreed approaches. In the oil palm sector, Wilmar, Golden Agri-Resources, Musim Mas and Asian Agri are all members of the RSPO and are therefore obliged to respect the right to FPIC. Referring to the FAO's voluntary guidelines and responding to pressure from its customers, at the end of 2013 Wil-

2 The anti-land-grabbing norms of the RSPO are set out in its principles and criteria (RSPO 2013). Criterion 2.1 stipulates that 'There is compliance with all applicable local, national and ratified international laws and regulations', criterion 2.2 that 'The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights' and criterion 7.5 that 'No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their free, prior and informed consent'.

mar said it would end deforestation and respect indigenous land rights, including the right to FPIC (Wilmar International 2013). Indonesia's two major pulpwood companies, Asia Pacific Resources International Holdings Ltd (APRIL) and Asia Pulp and Paper (APP), have also issued policies on sustainable forest management, including commitments to respect the right to FPIC and community rights to land (see, for example, APRIL 2015).

THREE CASE STUDIES IN THE OIL PALM SECTOR

Oil palm plantations in Indonesia cover about 10 million hectares (BPS 2013: 238), or some 5 per cent of the nation's land area. Over the next 20 years, this is expected to expand by up to 20 million hectares (WALHI et al. 2013). Most of the planned expansion will take place in areas currently covered by community gardens and forests.

Under national law, oil palm companies are obliged to obtain the consent of land users, including farmers and communities without registered title, before taking over their lands for plantation development. The process of obtaining such consent, however, is rarely free of manipulation and duress, and communities are generally not informed of the consequences of releasing their lands for plantation development. The consent process requires farmers to sign a form releasing their rights to land, but very few if any are informed that, as a result, their individual and collective rights to that land will be extinguished (Afrizal 2007, 2013). The compensation paid to farmers for relinquishing their land, meanwhile, is usually less than $50 per hectare.

Despite agreeing to respect the right of communities to give or withhold their free, prior and informed consent, RSPO member companies are among those that routinely fail to inform communities that, by releasing lands to a plantation company, they will lose all future community rights over those lands. In a series of field studies in 2012, the Forest Peoples Programme and its Indonesian NGO partners found that none of the six oil palm companies investigated had informed affected communities of the consequences of signing land release agreements (Colchester and Chao 2013). In 2015, following a complaint brought by the Forest Peoples Programme, the RSPO ruled that one of those companies, Golden Agri-Resources, had not informed communities about the consequences of plantation development for their communal rights to land, and had therefore violated the RSPO standard requiring companies to obtain the informed consent of affected communities. The RSPO required Golden Agri-Resources to renegotiate agreements with affected communities in 18 of its concessions, covering an area of more than 100,000 hectares.

Figure 13.1 Location of the case-study communities in Sumatra

In this section, we examine the application of the FPIC principle in three concessions owned by another RSPO member, Wilmar. The cases concern the Pangean community in Riau province and two neighbouring communities in West Sumatra province, the Kapa and the Sasak (Figure 13.1). All three communities self-identify as customary law societies (*masyarakat hukum adat*) and as members of the local *adat* polity (*masyarakat*

nagari).[3] The Pangean community is of Melayu ethnicity, while the Kapa and the Sasak are Minangkabau. We studied these communities for three reasons. First, all were involved in disputes with Wilmar and its subsidiaries, with differing results. Second, two of the communities, the Pangean and the Kapa, attempted to use the RSPO's complaints mechanism to resolve their disputes, providing an interesting contrast with the one that did not. Third, although the Pangean and Kapa communities were seeking different objectives, their problems were similar in that they both believed that their right to exercise free, prior and informed consent had been violated by Wilmar. Comparing these three communities allows us to explore the factors that facilitated, and constrained, their attempts to obtain redress based on FPIC as a guiding principle of the RSPO.

Land acquisition by a company involves seeking and obtaining community consent both to use community lands and to obtain a commercial lease (*hak guna usaha*, HGU) from the government over those lands (Presidential Decree 36/2005 on Land Acquisition to Realise Development in the Public Interest, article 2). Accordingly, the right of communities to give or withhold their free, prior and informed consent relates both to a company's use of their lands and to any application by the company for a lease right (HGU) over that area from the National Land Agency (Badan Pertanahan Nasional, BPN).

In 2004, some 220 members of the Pangean community in Riau began a concerted attempt to reclaim 450 hectares of customary lands that had originally been developed as rubber gardens. They claimed that an oil palm company, PT Citra Riau Sarana (CRS), had taken the land from them in 1997 without their consent. The land had then become part of the company's 12,299-hectare oil palm plantation, which included a scheme for smallholders (Colchester and Chao 2013). Wilmar purchased CRS in 2005, and thus inherited the dispute between the company and the community. After five years of requests that it comply with the RSPO standard on FPIC (Afrizal 2015), in 2010 Wilmar returned 225 hectares of oil palm plantations to the Pangean community to compensate its members for the loss of their customary land.[4] Wilmar eventually obtained consent from the Pangean community to continue to use the remaining 225 hectares of customary land.

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3 Indonesian agrarian law differentiates between a community (*komunitas*) and a customary law community (*masyarakat hukum adat*). The latter is a community that has customary territory, customary law and customary leadership. It is only this type of community that is said to have customary rights to land.

4 See CAO (2012) for a summary of the complaint and the procedure used by the Compliance Advisor Ombudsman to resolve it.

In 1992, the Sasak community in West Sumatra provided 12,000 hectares of its customary land to the Pasaman district government so that a Wilmar subsidiary, PT Permata Hijau Pasaman 1 (PHP1), could develop it as oil palm plantations. Until then, the land had been forested and was used by the community as a source of rattan. In the 1992 letter of land transfer (*surat penyerahan tanah*), the company recognised the customary rights of the Sasak community to the land and agreed to provide community members with *plasma* oil palm plots equivalent to 30 per cent of the area of land that the Sasak had released.[5] The company did not deliver on this promise, however.

After the fall of the Suharto dictatorship, communities across the nation, including the Sasak, felt empowered to act against injustices against them. In 2000, the Sasak community staged a protest against PHP1, demanding that the company hand over the promised oil palm plots. In response, the company provided plots to a few community members, amounting to far less than the 4,000 hectares that had been promised to them. In the hamlet of Rantau Panjang, for example, no one obtained an oil palm plot.

Despite what seems to have been a poor outcome for the Sasak, the company's tactic worked, and the community did not undertake any further collective efforts to obtain the promised oil palm plots. The leaders of the Sasak generally seem to have been happy that some community members received oil palm plots, no matter how few. The next step for PHP1 was to obtain a government licence for its plantations, for which it needed community consent. Without consulting his community, the head of the Sasak Adat Council signed an agreement with PHP1 allowing it to apply for an HGU licence over Sasak lands.[6]

The dispute between the neighbouring Kapa community and the same company, PHP1, remains unresolved, in particular in regard to the size and location of PHP1's plantations on Kapa lands, and PHP1's efforts to obtain an HGU.[7] The Kapa leaders wrote a letter to BPN in

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5 Under the nucleus–*plasma* model, oil palm companies agree to provide small plantation plots of 1–2 hectares (*plasma*) to individual farmers, in return for the use of their community lands as a nucleus plantation estate. Typically, farmers receive 1 hectare of established plantation for every 5 hectares they relinquish, and eventually receive land title for the plot after paying back the debt to the company for establishing the plantation.

6 Interviews with Alman Gampo Alam (highest *adat* leader of the Kapa) and Zulkifli (an informal leader of the Kapa), Kapa and Simpang Empat, January–March 2015.

7 Details of the dispute, including links to most of the correspondence mentioned in the discussion below, can be found on the RSPO's website; see http://www.rspo.org/members/complaints/status-of-complaints/view/76.

April 2014 asking it to prevent PHP1 from obtaining an HGU over 600 hectares of their land, in order to stop the land from being classified as state land. Instead, they wanted PHP1 to negotiate a lease agreement directly with the community.

In September 2014, PHP1 officials asked the highest customary leader (*pucuak adat*) of the Kapa community, Alman Gampo Alam, to sign a letter releasing rights over the 600 hectares, which PHP1 had been using for 15 years. Alam refused to sign the letter because he knew, through advice from NGOs, that this would cause the land to become state land. The *pucuak adat* then sent a letter of complaint to the RSPO protesting the actions of the PHP1 officials, and asking the company not to proceed with its HGU application. In the letter, he said:

> We reject PT PHP1's application to BPN for an HGU certificate over the customary (*ulayat*) land of Nagari Kapa […] The objection was based on the fact that the land right transfer by the Ninik Mamak [customary leaders] of Kapa to the district head of Pasaman district, as stated in a land release letter in 1997, was not done in accordance with the Nagari Kapa customary law. As such, the release of the customary lands of the Kapa to the oil palm company PT PHP1 and the HGU decree were granted in contravention of RSPO's Criteria 2.2. […] We ask PT PHP1 not to proceed with the application.[8]

In response, the RSPO and Wilmar agreed to meet with representatives of the Kapa to discuss their complaint. The meeting (at which both of the authors of this article were present) was held on 19 November 2014 in Kuala Lumpur. At the meeting, both parties agreed that representatives of the community and Wilmar would meet with BPN officials in Padang in December 2014 to explore ways in which Wilmar could continue to operate on the community's lands without an HGU.[9] But despite making this commitment, and in disregard of the community's objections, Wilmar proceeded with its application for an HGU over Kapa lands, and obtained it from BPN the following day.

On 16 December 2015, Alman Gampo Alam sent a second letter of complaint to the RSPO protesting Wilmar's decision to proceed with its application for an HGU. In the letter, the *adat* leader accused Wilmar of ignoring the community's right to the lands in question and of violating criteria 2.2 and 2.3 of the RSPO concerning FPIC. Wilmar continues to deny that this is the case.

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8 A summary of the complaint (filed on 23 October 2014) is available on the RSPO's website; see http://www.rspo.org/members/complaints/status-of-complaints/view/76.

9 See http://www.rspo.org/members/complaints/status-of-complaints/view/76, letter dated 11 February 2015.

The central claim of the Kapa community is that it did not intend to surrender its land rights when it agreed to make its land available to the Pasaman district government in 1997. An analysis of the 1997 land transfer letter backs the conclusion that the Kapa community did not intentionally release its rights of land ownership to the district government. The West Sumatra office of BPN argues that, once the community had handed over its land to the government, there was no requirement for the company to ask for the community's consent before applying for an HGU. But the Kapa argue that their customary leaders provided the land in question to the head of Pasaman district for use as an oil palm plantation, and had never consented to PHP1 obtaining an HGU that would extinguish their rights to the land. Despite Wilmar's commitment to the right to FPIC and the RSPO standard, it prefers the land agency's argument to that of the Kapa community.

The problem for the Kapa is that its proposed solution, whereby Wilmar would make a lease agreement directly with the community, is without precedent and its legal validity is untested. For its subsidiary to operate legally and comply with the RSPO standard, Wilmar must obtain an HGU. By throwing its support behind Wilmar, the West Sumatra office of BPN has strengthened the company's position and weakened that of the community. Wilmar was able to draw on the arguments of the West Sumatra officials in deciding that there was no need for the company to obtain the Kapa's consent before applying for an HGU.

It appears, however, that the acquisition of the Kapa's customary lands by the district government (not PHP1) in 1997 may have been in contravention of Presidential Decree 55/1993 on Land Acquisition to Realise Development in the Public Interest. Before 1993, the process of acquiring land for use by corporations, including oil palm corporations, was regarded as being in the national interest (Presidential Instruction 9/1973 on the Procedure for Implementing the Revocation of Rights to Land and Objects on the Land). At the time, land acquisition was organised by local governments and carried out by local land acquisition committees (*panitia pengadaan tanah*). Under this scheme, indigenous communities provided their customary lands to local governments (frequently under duress) and corporations then acquired these lands from the government (Afrizal 2007, 2013).

However, Presidential Decree 55/1993 differentiates between development activities carried out by governments and those carried out by corporations. Under the 1993 decree, only government activities are defined as being in the public interest. In addition, the decree stipulates that there are two modes of 'freeing up' land (that is, land acquisition). The first is for land to be released or relinquished through a transfer of title (*pelepasan atau penyerahan hak atas tanah*) and the second is for land

to be released or relinquished without a transfer of title (*tanpa penyerahan hak*). Land acquisition based on a transfer of title can only be used for development that is in the public interest and organised by the government. Land acquisition for purposes not deemed in the public interest should be done in ways agreed upon by the parties involved, but this would not include a transfer of land title. Accordingly, under the 1993 decree, land acquisition for oil palm plantations carried out by corporations must be done in such a way that indigenous communities do not lose their rights to land.

Thus, the Kapa's loss of customary rights to the land in question due to the issuance of an HGU over that land not only represents a failure by PHP1 to respect the Kapa community's right to FPIC under the RSPO standard, but also may be in violation of Indonesian law (Presidential Decree 55/1993). If the RSPO fails to uphold the Kapa's claim that Wilmar is in violation of the RSPO standard, then the Kapa people could still choose to ask Indonesia's administrative court to consider the validity of BPN's decision to issue an HGU over their land.

To date, the response of the RSPO to the written complaint of the Kapa has been problematic. In a preliminary decision dated 10 March 2015, the RSPO Complaints Panel decided that PHP1's HGU application was in line with relevant laws and that Wilmar had therefore not violated the RSPO standard. The panel's reasoning was that:

> The initial acquisition of the land was done by the local government and not the company. As such, any discrepancies in the acquisition should be directed to the local government and legal redress be sought at through local administrative courts.[10]

The Kapa community has expressed its objection to this preliminary decision, and the RSPO is now carrying out a further investigation to explore the Kapa's and Wilmar's arguments.

The Kapa community has also used other forums to attempt to put pressure on Wilmar. At the request of Kapa leaders, in 2013 and 2015 the Forest Peoples Programme publicised the Kapa case internationally, criticising Wilmar for failing to respect community rights. The Kapa also appealed to the BPN office in Jakarta in 2015, asking it to cancel the HGU granted to PHP1. At the time of writing (November 2015), the Kapa people had not received a response from BPN. The other legal strategy available to the Kapa, namely to take their case against BPN to the administrative court, would be long and costly, and it is rare for communities to win such cases. This highlights the difficulties communities

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10 See http://www.rspo.org/members/complaints/status-of-complaints/view/76, letter dated 10 March 2015.

such as the Kapa face in holding companies to account, either through the international guidelines to which those companies have committed or through the use of domestic remedies.

Moreover, since lodging a complaint with the RSPO in September 2014, the Kapa leadership has been subjected to intimidation and harassment. The trouble started when three members of the Kapa community lodged a complaint with the local police claiming that their customary leaders (*ninik mamak*) had corruptly used funds generated by the community's oil palm plots. The case was picked up by the provincial police after the local police dismissed it as being without merit. In January 2015, all 18 *ninik mamak* of the Kapa were required to travel five hours by bus to the provincial capital of Padang, where they were questioned by the West Sumatra police. Five of them were required to attend weekly police interrogations in Padang for several months afterwards, and their leader, Alman Gampo Alam, was arrested and detained in Padang for six weeks. During that time, Alam was regularly questioned about why he had travelled to meet RSPO officials in Kuala Lumpur, who had paid for his ticket and who had helped him to make the complaint against Wilmar. To secure his release, he agreed to sign statements saying that he had relinquished his right to a lawyer and that he had stepped down from the position of highest customary leader (*pucuak adat*) of his community. Although Alam signed these statements under duress, this means that he will not be able to pursue a case against the police for wrongful detention. However, he remains *pucuak adat*—a status conferred by the other *ninik mamak*—so in this respect at least, the attempt of the police to weaken his position has failed.

The *ninik mamak* believe that the police campaign against them was orchestrated by PHP1 in order to weaken their struggle against Wilmar. Although Wilmar rejects the accusation, the community has asked the RSPO and the National Commission for Human Rights to investigate this matter. If the *ninik mamak* are correct in their supposition, then this would again highlight the difficulties faced by indigenous communities that attempt to use the RSPO standard and complaints mechanism to assert their rights. The Kapa community says that it will continue to fight for recognition of its rights, both through the RSPO and through government mechanisms such as the newly created communal right (*hak komunal*) that BPN can confer on indigenous and local communities, as well as community cooperatives, in forest and plantation areas.

The three cases described above reveal that involuntary land acquisition continues to be a major issue for communities affected by oil palm plantations, despite the largest plantation companies having committed to RSPO and FAO standards. To some extent, the success or otherwise of their struggles depends on factors outside their control, in particular the

willingness of companies to honour their commitments to resolve conflicts rather than use dirty tricks. Another factor is the extent to which the communities and their leaders are able to maintain a common front in the face of efforts to divide and rule them. Consistent and informed support from NGOs is also important. The Pangean and Kapa communities were well supported by NGOs, whereas the Sasak community received little to no support. As a result, the former two communities proceeded to submit complaints to Wilmar and the RSPO, while the latter did not. In Riau, the Sustainable Social Development Partnership (Scale Up), Anak Negeri and the Forest Peoples Programme introduced the Pangean community to the concept of FPIC and the norms of the RSPO and helped the community access the RSPO complaints mechanism. In West Sumatra, the Forest Peoples Programme and Sawit Watch played a similarly valuable role for the Kapa community.

TWO CASE STUDIES IN THE PULPWOOD SECTOR

Indonesia's plywood export industry grew rapidly in the 1980s, aided by government subsidies and a log export ban. By the mid-1990s production had peaked, due largely to the overexploitation of forests, and the sector has been in slow decline ever since (Thee 2012; Makkarennu and Nakayasu 2013). The national government, seeking a new forestry export earner, prioritised pulpwood plantations, making large areas of natural forest available for fast-growing pulpwood plantations. Subsidies and tax breaks for investments in plantations and pulp mills continue today.

Acacia pulpwood plantations currently cover about 4 million hectares, mainly in Sumatra. The national government plans to triple the plantation area over the coming decade by issuing licences for an additional 10–15 million hectares. This will have enormous negative impacts on rural communities, and greatly increase rates of natural forest loss and greenhouse gas emissions, unless the government implements effective policies on human rights, environment and climate. A policy that supports greater recognition of community rights is set out in a new regulation, Minister of Environment and Forestry Regulation 12/2015 on the Development of Industrial Plantation Forest, which requires companies to make 20 per cent of their concession areas available for community use. The regulation requires companies to prepare reports on all conflicts with communities, including the location and extent of the communities' claims, to publish a plan on how they intend to resolve the conflicts and to make a budget available to do this. Communities can now report directly to a 'conflict desk' within the Ministry of Environment and Forestry when they find themselves in dispute with a company. If the min-

istry finds that the company is not taking adequate steps to resolve the conflict, the community can ask that the claimed lands be excised from the company's concession; the land claim is then resolved with the ministry without company involvement.

APP, part of the Sinar Mas group, is the largest pulp and paper company in Indonesia. Its plantations cover more than 1 million hectares, and it also purchases pulp logs from companies holding an additional 1.5 million hectares of plantations. In 2015, APP estimated that its concessions were in conflict with some 500 villages.

One of APP's subsidiaries, PT Wira Karya Sakti (WKS), was awarded an industrial plantation concession area of 294,000 hectares in Jambi province, Sumatra, in 2004 (Figure 13.1). The concession overlaps with the lands of some 120 villages, many of which protested against the takeover of their forests and gardens. One such community is the hamlet of Senyerang, in Tanjung Jabung district, northern Jambi. Conflict between the Senyerang community and the company led to the killing of a community member by the police during a community protest against WKS in 2010 (Anderson, Oktavian and Rudiansyah 2014).

In January 2013, after losing major contracts with paper buyers in the United States, Europe and Japan due to concerns about its environmental and social record, APP announced a new forest conservation policy to protect forests, reduce greenhouse gas emissions and respect community rights. Non-government groups asked APP to prioritise Senyerang as a test case to apply its new commitment to respect the rights of affected communities and resolve outstanding conflicts. Over the next six months, the company negotiated an agreement with Senyerang that gave the community access to 1,000 hectares of its customary lands to plant rubber, equivalent to 0.5 hectares per family. The company also provided compensation for its ongoing use of an additional 3,000 hectares of community lands.

APP's treatment of the Senyerang community did not go beyond what current laws and regulations in Indonesia require, and did not match the company's public commitments. The 4,000 hectares that comprised the object of the negotiations was only about half the customary lands that the company had taken over to plant Acacia. This allocation had been set by the district government in 2004 and the company was not willing to consider recognising the whole of the community's lands. The community's members accepted that the negotiations would concern only half their customary lands, and that the land would retain the status of industrial plantation forest (*hutan tanaman industri*, HTI), leaving any final recognition of their rights by government to another time. They asked for control of all 4,000 hectares to be returned to them so that they could plant rubber, but the company refused to release more than

1,000 hectares. The benefit-sharing agreement covering the other 3,000 hectares provides the community with about $1 per cubic metre of harvested Acacia wood, a fraction of the profit that the company is making from growing Acacia and selling it to its own pulp factory.

APP and WKS are presently preparing to negotiate with the 120 other villages affected by WKS's takeover of their land. Communities and NGOs are pushing the company to recognise customary rights to land and to negotiate over all community-claimed lands. Two regulations issued in 2015—Minister of Environment and Forestry Regulation 12/2015 on industrial plantation forest (HTI) and Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015 on communal rights to land—should give communities greater scope to assert their rights in relation to pulpwood companies. The former contains specific clauses on company obligations to resolve conflicts, and the latter for the first time recognises and creates a category of communal rights to land. It allows communities to apply to the Ministry of Agrarian Affairs and Spatial Planning for recognition of their collective rights to land inside the forest zone and in plantation areas.

Another community conflict involving APP is in South Sumatra. In 2004, an APP subsidiary, PT Bumi Mekar Hijau (BMH), obtained a concession in Ogan Komering Ilir district and commenced clearing and planting Acacia without first seeking free, prior and informed consent from the village of Riding, whose customary lands overlap with the concession (Anderson 2013). Concerned that their livelihoods would be adversely affected by the plantation, between 2005 and 2007 the community's members protested against the company by sending letters, meeting with company staff and holding many public demonstrations. As a result of the ongoing protests, 10,000 hectares of community lands were not developed into pulpwood plantations, even though they were situated inside the BMH concession area. Other areas of customary land of the Riding community were taken over, cleared, drained and planted with Acacia without community consent and without compensation. In 2006, after a series of major demonstrations and meetings between the community and BMH, facilitated by the local government, the company signed an agreement allowing the community to use the 10,000 hectares of land for a community rubber plantation. However, the agreement was never implemented because the company failed to sign it.

In 2013, following the release of APP's forest conservation policy, Riding village again asked BMH to recognise and respect its community land rights. Negotiations between the community and the company recommenced in 2013, with the community assisted by local NGO Wahana Bumi Hijau (WBH). WBH informed the community about APP's new policy on community rights, FPIC and the resolution of conflicts. The

negotiations took place over a year and focused on the 10,000 hectares of community lands that the company had been unable to plant. Agreement was reached on a benefit-sharing arrangement that would allow the company to plant part of those lands in return for an annual fee, with the remainder of the land available for the community to establish agriculture. A draft agreement was reached in mid-2014, but in late 2015 had not yet been finalised or signed.

The draft agreement is stronger than that reached with the Senyerang community, in that the land in question is not limited to 2 hectares per family. The community was better able to assert its rights as to when the negotiations would take place, who would represent the community, who would mediate the process and what the object of the negotiations would be. In part this was due to the close advice and support of the local NGO WBH, and in part due to the fact that the process took place after the Senyerang negotiations and agreement.

In both cases, the agreements do not change the status of the lands in question, which remain part of the HTI licence area of the company. Minister of Environment and Forestry Regulation 12/2015 may assist Riding and other communities in dispute with companies to insist, if they wish, that their lands be taken out of the HTI concession area. Together with the regulation on communal rights to land (Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015), it brings Indonesian law closer to enforcing the international obligations that pulp and paper companies have taken on. The hope and expectation of advocacy groups working in the HTI sector is that these legal developments will allow for more comprehensive and widespread resolution of conflicts between communities and pulpwood plantation companies.

CONCLUSION

Pressure from markets and investors has pushed plantation companies to adopt and follow human rights standards for FPIC and conflict resolution, based on international norms and laws. These company commitments go beyond Indonesian law, and provide avenues for communities to have their rights to access and use their lands respected. Company implementation of those commitments, however, has been dependent on the pressure communities and their NGO supporters (if they have any) can bring to bear. The effort required from civil society to support a community's demands for justice means that, so far, few affected communities have been able to achieve remedy for their losses from plantation companies. The backlog of conflicts between communities and plantation companies runs to several thousand, with a disputed land area of many millions of hectares.

NGOs and communities hope that successful conflict resolution cases will serve as examples to improve government regulations and administration, so that communities are able to find remedy for the loss of rights over their lands. The new regulation on communal land rights (Minister of Agrarian Affairs and Spatial Planning 9/2015) provides scope for communities to have their communal rights to land recognised by both government and industry. This closer alignment between Indonesian law and international law creates the basis for a more comprehensive effort to address conflicts between communities and plantation companies. This is particularly important given the intention of the government and industry to triple the area under industrial plantations in the coming two decades.

REFERENCES

Afrizal (2007) *The Nagari Community, Business and the State: The Origin and the Process of Contemporary Agrarian Protests in West Sumatra, Indonesia*, Forest Peoples Programme and Sawit Watch, Bogor.

Afrizal (2010) 'Large scale palm oil plantation development, recognition of local people's customary rights and agrarian conflicts in Indonesia after the fall of President Soeharto: a lesson learned from provinces of West Sumatra and Riau', CIAS Discussion Paper Series No. 15, Center for Integrated Area Studies (CIAS), Kyoto: 97–126.

Afrizal (2013) 'Oil palm plantations, customary rights, and local protest', in A. Lucas and C. Warren (eds) *Land for the People: The State and Agrarian Conflict in Indonesia*, Ohio University Press, Athens, OH: 149–82.

Afrizal (2015) 'Third-party intervention in terminating oil palm plantation conflict in Indonesia: a structural analysis', *SOJOURN: Journal of Social Issues in Southeast Asia*, 30(1): 141–72.

Anderson, P. (2013) 'Field trip to the communities of Riding, Sungai Rasau and Jadi Mulya in OKI, South Sumatra, July 2013', Forest Peoples Programme, Moreton-in-Marsh. Available at http://www.forestpeoples.org/topics/pulp-paper/publication/2013/community-impacts-asia-pulp-and-paper-s-pulpwood-plantations-sout

Anderson, P., H. Oktavian and Rudiansyah (2014) 'Lessons learned from the conflict, negotiations and agreement between Senyerang village and PT Wira Karya Sakti', Forest Peoples Programme, 19 December. Available at http://www.forestpeoples.org/topics/pulp-paper/publication/2014/lessons-learned-conflict-negotiations-and-agreement-between-senye

APRIL (Asia Pacific Resources International Holdings Ltd) (2015) 'APRIL Group's sustainable forest management policy 2.0', APRIL, 3 June. Available at http://www.aprilasia.com/images/pdf_files/april-sfmp2-3-june-2015.pdf

BPS (Badan Pusat Statistik) (2013) *Statistical Yearbook of Indonesia*, Statistics Indonesia (BPS), Jakarta.

CAO (Compliance Advisor Ombudsman) 'Ombudsman conclusion report—Wilmar 2', CAO, June. Available at http://www.cao-ombudsman.org/cases/document-links/documents/Wilmar2ConclusionReportOmbudsmanJune2012.pdf

Colchester, M. and S. Chao (eds) (2013) *Conflict or Consent? The Oil Palm Sector at a Crossroads*, Forest Peoples Programme, Sawit Watch and TUK Indonesia, Moreton-in-Marsh, Bogor and Jakarta.

Colchester, M., N. Jiwan, Andiko, M. Sirait, A.Y. Firdaus, A. Surambo and H. Pane (2006) *Promised Land. Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Sawit Watch, HuMA and World Agroforestry Centre, Moreton-in-Marsh and Bogor.

Dewan Kehutanan Nasional and UN-REDD Programme Indonesia (2011) 'Rekomendasi kebijakan: instrumen free, prior informed consent (FPIC) bagi masyarakat adat dan atau masyarakat lokal yang akan terkena dampak dalam aktivitas REDD+ di Indonesia' [Policy recommendations: the instrument of free, prior and informed consent (FPIC) of indigenous peoples and the local community that will be affected by REDD+ activities in Indonesia], National Forestry Council (Dewan Kehutanan Nasional) and UN-REDD Programme Indonesia, Jakarta.

FAO (Food and Agriculture Organization) (2012) 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security', FAO, Rome. Available at http://www.fao.org/nr/tenure/voluntary-guidelines/en/

Kropiwnicka, A.M. (2012) 'A brief introduction to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security', ActionAid and International Food Security Network, June.

Makkarennu and A. Nakayasu (2013) 'Prospective Indonesian plywood in the global market', *Journal of Life Sciences and Technologies*, 1(3): 190–95.

McCarthy, J.F. (2012) 'Certifying in contested spaces: private regulation in Indonesian forestry and palm oil', *Third World Quarterly*, 33(10): 1,871–88.

RSPO (Roundtable on Sustainable Palm Oil) (2013) 'Principles and criteria for the production of sustainable palm oil 2013', RSPO, April.

Thee, K.W. (2012) 'The Indonesian wood products industry', in *Indonesia's Economy since Independence*, Institute of Southeast Asian Studies, Singapore: 230–47.

UN Human Rights Council (2012) 'Report of the Working Group on the Universal Periodic Review: Indonesia. Addendum: views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review', A/HRC/21/7/Add.1, 5 September. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-7-Add1_en.pdf

WALHI (Wahana Lingkungan Hidup Indonesia) et al. (2013) 'Indonesian civil society petition to the European parliament on biofuels policy', Indonesian Forum for the Environment (WALHI), Jakarta, September. Available at http://www.biofuelwatch.org.uk/wp-content/uploads/Indonesian-Civil-Society-Petition-on-EU-biofuels-policy.pdf

Wilmar International (2013) 'No deforestation, no peat, no exploitation policy', Wilmar, 5 December. Available at http://www.wilmar-international.com/wp-content/uploads/2012/11/No-Deforestation-No-Peat-No-Exploitation-Policy.pdf

14 How can the people's sovereignty be achieved in the oil palm sector? Is the plantation model shifting in favour of smallholders?

Lesley Potter

> On the surface, oil palm appears to be dominated by large plantations. However, […] the facts that smallholders now account for over 40% of the oil palm area in Indonesia, the largest producer, and 80% in Thailand the third largest producer indicate that the structure of the industry is already shifting (Byerlee 2014: 584).

This statement is part of Byerlee's historical analysis of the evolution of agrarian structures in tropical Asia between 1850 and about 2000, using case studies of tea, rubber, cassava and oil palm. Byerlee argues that economic conditions in colonial states (such as pioneering costs and risks) favoured the plantation model, as well as discriminatory attitudes towards smallholders and a preference for cheap land and labour. Three of the four commodities he studied had moved largely to smallholder production by the end of the twentieth century.

While he acknowledges that the Thai oil palm industry never had a tradition of large plantations, Byerlee uses the example of Thailand to show what may be possible: a government that forbids foreign ownership of farmland and consistently supports smallholders; an agricultural bank that provides long-term loans for tree crops; farm holdings of 4–8

The author would like to acknowledge the fieldwork assistance of Mangarah Silalahi in Riau in 2012 and Central Kalimantan in 2015, and of Andiko in Riau in 2015.

hectares; farmers with generally secure tenure; and large numbers of mills competing for farmers' fruit (Byerlee 2014: 584).[1]

However, the 'rebirth' of large plantations in parts of mainland South-east Asia (Laos, Cambodia and Myanmar) and the continuation of the plantation model for oil palm in Sumatra, Borneo and New Guinea appear to refute his argument. Byerlee wonders whether this indicates a change in the economic fundamentals of technology and markets, or whether it is more the result of 'state policies and investor "mindsets"' (Byerlee 2014: 575). He perceives this resurgence of large plantations to be a 'temporary aberration' from the long-term trend towards smallholders.

Byerlee acknowledges that, for smallholders to be competitive, their farms must increase in size and productivity. Much will depend on a local political economy 'that levels the playing field for smallholders through development of basic services of research, extension, land tenure security and financial institutions' (Byerlee 2014: 592). He argues, in the meantime, for coexistence and mutually beneficial partnerships between smallholders and 'responsible agribusiness companies', a call echoed in a recent Oxfam Discussion Paper by consulting group Aid-environment (2014). The latter paper argues for the need to develop what it calls 'FAIR' partnerships, based on Freedom of choice, Accountability, Improvement and Respect for rights. These kinds of partnerships would presumably have Byerlee's approval, although achieving them would not be easy.

In the context of Indonesia, a number of the aspects Byerlee identifies as favouring the plantation model during the colonial period continue to be relevant. Certainly the discriminatory attitudes toward smallholders and the preference for cheap land and labour are still applicable, especially in a relatively new oil palm province with a predominantly indigenous Dayak population such as Central Kalimantan. Such attitudes also continue in the largely plantation-dominated economy of North Sumatra, where cheap labour is being sourced from the offshore island of Nias and other less developed areas.[2] Despite wage increases, Indonesia still has the lowest labour costs among the countries producing palm

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1 In a second study, Byerlee et al. (2014) recommend the Thai model to Myanmar, which has been developing a plantation-based oil palm industry.

2 Nias is an island off the west Sumatran coast with a strong traditional culture. It was badly affected by the 2004 tsunami and an earthquake in 2005. Several oil palm plantations in North Sumatra have recently contracted workers from Nias to work as casual day labourers (*buruh harian lepas*) on their estates. These workers have low levels of education, do not speak the Indonesian language well and are often exploited. Plantations in districts in Riau near the North Sumatra border, such as Rokan Hulu, also employ labourers from Nias (fieldwork in North Sumatra, July 2012).

oil, while cheap Indonesian labour has largely supported Malaysia's oil palm industry.[3]

Companies have been able to acquire cheap land for oil palm expansion in Indonesia largely at the expense of villagers, whose land tenure status has historically been weak (see Chapter 3 by Bedner and Chapter 10 by Van der Eng). Villagers whose traditional lands are located in areas slated for oil palm plantations have been encouraged to give up some of their land for plantations in return for 2-hectare oil palm smallholdings, together with credit for inputs such as seed and fertiliser. They are termed *plasma*, 'assisted' or 'scheme' smallholders, terms that are more or less interchangeable, but all indicating a tied relationship with a host plantation, to which they must repay their credit. The other major category of oil palm smallholders, independents (*swadaya murni*), have no direct connection with a plantation. They usually convert their existing land to oil palm (from, for example, rubber) or buy land from others, but have also been known to illegally open up land in national parks or protected areas. Many independent smallholders are migrants.[4]

State policies at both the central and district levels have supported the plantations. Since decentralisation in 2001, when considerable power was devolved to the districts, the latter have had responsibility for the issuance of permits for the first three stages of plantation development, beginning with the location permit (*ijin lokasi*). The final permit, the land cultivation right (*hak guna usaha*, HGU), is issued by the provincial government only after the land has been declared released from state forest status by the minister of forestry. The permits issued by district governments have become a source of patronage for local politicians (Larsen et al. 2012). In addition, district officers regularly accompany plantation officials to villages in which plantation companies are seeking land, helping to conduct *sosialisasi* (exhortation, familiarisation and propaganda) exercises in favour of the companies.

While 'state policies and investor "mindsets"' are probably more important in the current environment than technology or markets, all play a part. As the world's largest producer of palm oil, Indonesia's national policies are geared towards maintaining the country's competitive advantage. The plantation lobbies, including the Association of Plantation Investors of Malaysia in Indonesia (APIMI), also play a powerful

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3 Minimum wages for labourers increased by almost 50 per cent in some provinces in 2013. These increases resulted in numbers of plantation workers returning to Indonesia from Malaysia, raising fears of a labour shortage in the latter country (Raghu 2014).

4 For a discussion of the various options available to villagers whose land is being sought for oil palm, see Li (2015) and Potter (2015).

role. Certifying schemes such as the Roundtable on Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) are set up to handle the large plantations first, and find it easier to trace certifiable supplies of the product from a larger organisation. It is only the burgeoning numbers of independent smallholders in provinces such as Riau that have led to some attempts at plantation–smallholder partnerships.[5]

Is the industry in Indonesia really shifting towards smallholders? Which smallholders? Where? Across Indonesia's palm-growing provinces, the distribution of land between large plantations and smallholders (both scheme and independent, defined as farmers with less than 25 hectares) is very uneven. While the average proportion devoted to smallholdings may be increasing, some provinces depart significantly from the average. Marked shifts in agrarian structure (from plantations towards smallholders) can be discerned in parts of Sumatra, but such shifts have been slower to develop in Kalimantan. What might shifts in agrarian structure mean in terms of smallholder welfare? Does the acquisition of a plot of oil palm land mean a sure path to prosperity?

McCarthy (2010), citing evidence from Jambi, Sumatra, predicts that many more small farmers (particularly ethnic Melayu) will seek to enter the industry, mostly by planting on their own land, but may do so at a low level, from which they will have difficulty improving their position. He terms this process 'adverse incorporation'. Much depends on the area of land they are able to control, as well as the quality of the inputs they apply, especially planting materials and fertiliser. The original land allowance for scheme smallholders (those assisted by plantations) was set too low, being only 2 hectares.[6] Transmigrants theoretically also

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5 Different meanings are given to this phrase. The one I am using here applies to attempts by plantations, non-government organisations and others to assist independent smallholders to upgrade their technical knowledge of the crop, so that they become more efficient producers. The final aim is to enable a group of smallholders (who sometimes form themselves into a cooperative) to receive certification for their crop from the ISPO or the RSPO. In Riau, for example, the plantation group Asian Agri formed a partnership with an ex-transmigrant group, the Amanah Palm Oil Independent Smallholders Association, which received RSPO certification in 2013.

6 The amount of land to be given to both first-generation smallholders and transmigrants was apparently influenced by conditions in Java, where the size of the average holding was only 0.5 hectares. Only 4 per cent of Javanese possessed two or more hectares (Davis 1988a). Under the original food crop schemes, transmigrants were given 1 hectare of cleared land for immediate use and a second hectare of uncleared land for later development. One hectare was considered to be the maximum a family could cultivate without the help of draught animals or traction power. It was supposed to be enough to secure subsistence if properly cultivated (Martono 1984, cited in Otten 1986).

received 2 hectares, but clearing and planting of the second hectare was often delayed, sometimes prompting nearby estates to claim or invade such lands.[7] As long as many smallholders continue to possess only 2 hectares, their emergence from rural poverty is unlikely, especially when oil palm prices are low. In the course of fieldwork over the past two years, in Sumatra as well as Kalimantan, I constantly heard farmers say 'Life is hard now, as I only have 2 hectares'. Fieldwork in 2015, on which I base much of the argument in this chapter, suggests that while adverse incorporation or the 'laissez faire' system continues in Riau and Jambi, some groups, especially Batak and Javanese migrants from North Sumatra and Aceh, and second-generation transmigrants, are doing better. There is also a middle group of growers, who are entering the industry with more capital, acquiring 50–100 hectares and becoming quite influential. They include local village elites, wealthy farmers and urban investors.

Byerlee's acknowledgment of the need for plantation–smallholder partnerships seems to be a recognition that his suggested shift to smallholders is likely to take time. It also seems like a step back from his main argument. However, partnerships are being proposed in Riau (and West Kalimantan)[8] and selected examples are appearing, though mainly involving ex-transmigrant groups (Gunawan 2013; Ansam 2015a, 2015b).

This chapter begins with a brief summary of the data on the area devoted to oil palm plantations and smallholdings in Indonesia's main producing provinces. It then describes the development of assisted smallholder schemes in Indonesia, tracing the allocation of land to such schemes from an initially favourable situation to one that has recently become much more onerous. To answer Byerlee's question as to whether

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7 Hardjono (2001) has noted that, in the early 1970s, preparations for transmigration settlements in the second Five Year Development Plan (1974–79) allowed 4–5 hectares per family so that tree crops could be grown. This approach was abandoned at the beginning of the third Five Year Development Plan (1979–84), when the transmigration planning agency in Jakarta reverted to 2-hectare holdings 'in the interests of resettling greater numbers of people' (Hardjono 2001: 9). In an earlier paper, Hardjono explains that although one model rubber project with more land was found to produce better outcomes for the settlers, planners decided that allowing 4–5 hectares was too expensive and that it would be too difficult to obtain the larger tracts of land needed (Hardjono 1986: 34–5). In the definitive World Bank study of Indonesia's transmigration program (Davis 1988b), it was suggested that at least 2.5–3 hectares were needed per family for tree crop schemes, so that some of the land could be used for food crops to offset low tree-crop prices. The original nucleus estate–smallholder schemes did provide extra land for food crops, but this was later discontinued.

8 In West Kalimantan, the Dutch NGO Solidaridad runs field schools for farmers on aspects of oil palm production, working in conjunction with Indonesia's biggest credit union, Keling Kumang (Solidaridad 2013).

Table 14.1 Distribution of oil palm plantations and smallholdings in seven leading oil palm provinces, by area, 2013

Province by rank	Plantations (government + private) (ha)	Smallholders (scheme + independent) (ha)	Total area cultivated with oil palm (ha)	Share of smallholders (%)
1 Riau	845,645	1,348,076	2,193,721	61.5
2 North Sumatra	946,695	393,653	1,340,348	29.4
3 Central Kalimantan	968,635	131,057	1,099,692	11.9
4 South Sumatra	529,743	530,830	1,060,573	50.5
5 West Kalimantan	599,897	314,938	914,835	34.4
6 East Kalimantan	585,991	230,266	816,257	28.2
7 Jambi	250,668	407,261	657,929	61.9
Total (7 provinces)	4,727,274	3,356,181	8,083,355	41.5
Total (Indonesia)	**6,108,933**	**4,356,087**	**10,465,020**	**41.6**

Source: Direktorat Jenderal Perkebunan (2014).

shifts in agrarian structure towards smallholders are occurring, the chapter undertakes a more detailed analysis of the extreme cases of the provinces of Riau and Central Kalimantan. This is followed by a brief survey of recent initiatives by President Joko Widodo's government to protect the interests of indigenous communities and smallholders.

THE DISTRIBUTION OF PLANTATIONS AND SMALLHOLDINGS AT THE PROVINCIAL LEVEL

Official statistics for 2013 show the variability in the distribution of large plantations and smallholdings in Indonesia's seven leading oil palm provinces (Table 14.1). In Table 14.1, private and government plantations are grouped, as are the two major categories of independent and scheme or assisted smallholders.

While the figures for plantation areas are reasonably accurate, the figures for smallholder areas are markedly less so. In some provinces, especially in Kalimantan, no official breakdown is available between scheme and independent smallholders, which is a serious disadvantage. The main reason for this discrepancy probably relates to the fact that the appearance of independent smallholders is a recent phenomenon in much of Kalimantan. In the Sumatran provinces, figures for the area

owned by independents (*swadaya murni*) do exist, but quickly become out of date because their numbers are increasing so rapidly. Tracking the independents is always more difficult, as they are likely to establish their holdings in more remote areas. Where their settlements are technically illegal, as in national parks and protected areas, they prefer to avoid official scrutiny.

One striking detail emerging from Table 14.1 is that the province with the largest area of plantations is Central Kalimantan, even though it is only third in the rankings of total area under oil palm, after Riau and North Sumatra. This is because it has such a low share of smallholders: only 11.9 per cent of the oil palm land in Central Kalimantan is occupied by smallholders, compared with 61.5 per cent in Riau. North Sumatra is also heavily plantation focused (only 29.4 per cent of the area is occupied by smallholders), reflecting its history as the colonial centre of a plantation-dominated industry.

THE DEVELOPMENT OF PLANTATION–SMALLHOLDER ARRANGEMENTS

Indonesia's plantation-based oil palm industry, which began in colonial North Sumatra and Aceh in 1911, used contract labour imported mainly from Java; there were no smallholders. Following the disruptions caused by World War II the industry was slowly restored, but smallholders began to appear on some of the nationalised government estates only during 1978–85. From 1981 the source of labour was again Java, with most people coming as government-sponsored transmigrants. The locus of oil palm planting expanded as government plantations extended beyond the colonial hub to West Kalimantan, Riau and West Sumatra, followed by East Kalimantan, Banten and later Jambi and South Sumatra (Lubis 2008).

Table 14.2 summarises the main points of the plantation–smallholder schemes that have evolved over time in Indonesia, and the gradation from 'generous' to 'onerous' in terms of the proportion of the total area of estate land made available to smallholders.

In the original model, known as the Nucleus Estate and Smallholder (NES) or Perkebunan Inti Rakyat (PIR) model, the assisted farmers (the *plasma*) were grouped around the core of the estate (the *inti*). Each family received an allotment (*kapling*) of 2 hectares of planted oil palm, together with 0.75 hectares for a food garden and 0.25 hectares as a house plot, after providing 5 hectares to the company for the mill and plantation and for infrastructure such as housing and roads (Potter and Lee 1998: 3, 21). Allocations to the smallholder group were generous, comprising 70–80

Table 14.2 Summary of schemes involving plantations and assisted smallholders

Period & name of scheme	Plantation operator	Source of labour force	Oil palm area for smallholders	Smallholder contribution to core estate	Distribution of total area between estate & smallholders	Credit repaid	Is scheme voluntary or mandatory for estate?
1970s–1985: NES, PIR	Government (World Bank funds)	Some local + transmigrant	2 ha (+ 0.75 ha for food crops)	5 ha	20/80 **Generous**	Directly, by deducting 30% of fruit value	Voluntary
1986–94: PIR, PIR-Trans	Many private, some government	Transmigrant + local component	2 ha	7.5 ha	30/70	As above	Voluntary
1995–2006: KKPA	Private	Mainly local	2 ha	7.5 ha	30/70 or 40/60	Indirectly, through cooperative or bank, which takes 30% of fruit value	Voluntary
2007–12: Kemitraan 1	Private	Mainly local; some new transmigrant	2 ha	7.5 ha	80/20 **Onerous**	Indirectly, through cooperative, which takes up to 70% of fruit value	Mandatory if estate has no previous scheme
2013–present: Kemitraan 2	Private	Local? Transmigrant?	2 ha? Outside estate	None	Must equal 20% of total area	Indirectly, through cooperative	Still voluntary; low take-up

Kemitraan = Partnership; KKPA = Kredit Koperasi Primer untuk Anggota (Primary Credit Cooperative for Members); NES = Nucleus Estate and Smallholder; PIR = Perkebunan Inti Rakyat (Nucleus Estate and Smallholder); PIR-Trans = PIR Transmigrasi (Nucleus Estate and Smallholder Scheme for Transmigrants).

Source: Potter and Lee (1998); Lubis (2008); Gillespie (2010); McCarthy, Gillespie and Zen (2012); Aidenvironment (2014).

per cent of the plantation land. Settlers were supplied with technical information, credit for seed and fertiliser, and assistance until their crops were producing (about four years). They gradually repaid the credit by selling 30 per cent of their harvests of fresh fruit bunches to the estate mill. Once the credit was repaid, farmers received legal tenure to their plots. One group of Dayaks who were part of the first PIR project from 1982 in Sanggau district, West Kalimantan, still had enough land outside the plantation to continue their traditional pursuits of swidden farming and rubber tapping. When the yields of their 2-hectare oil palm plots began to decline prematurely, they directed the plantation's fertiliser onto their rice fields instead. They saw oil palm as just another element in a diversified, 'typically extensive semi-traditional livelihood system' (Potter and Lee 1998: 25).

From 1986 to 1995, a new scheme based on greater availability of transmigrant labour and cheap land, PIR-Trans, encouraged more private estates to enter the industry. The government made land available for plantations to lease at low cost, and brought in labourers from Java to work the estates. By 1989 the private estates had more land under oil palm than the government-owned properties, and their share has continued to rise. In 1990, the area under oil palm reached 1 million hectares, and by 1995, 2 million hectares, with 32.5 per cent owned by scheme and independent smallholders, 47.5 per cent by private estates and 20.0 per cent by government estates (Direktorat Jenderal Perkebunan 2014). In 2013, when the total area cultivated with oil palm across Indonesia had reached 10.5 million hectares, the proportions of the three groups were as follows: smallholders (scheme and independent), 41.6 per cent; private estates, 51.4 per cent; and government estates, 6.7 per cent. Between 1995 and 2013, the area in government estates declined by just over 13 per cent, the area in private estates increased by 4 per cent and that under smallholders rose by 9 per cent.

In line with the upsurge in neoliberal ideas in favour of privatisation, in 1995 the government withdrew from funding the next group of schemes, the Primary Credit Cooperatives for Members (Kredit Koperasi Primer untuk Anggota, KKPA). Under a KKPA scheme, the financial arrangements for each new plantation were organised indirectly between a bank, a cooperative, the plantation and the smallholder. Where the cooperatives were independent and supportive of local welfare, this system could work in the smallholders' favour. Thus, Dayaks negotiating with PT Sime Indo Agro (PT SIA), a Malaysian-owned estate in Sanggau district, West Kalimantan, generally managed to give up much less land than the 7.5 hectares demanded by the plantation and still receive their 2 hectares of oil palm. They were able to do this because of a deal organised with the company by a strong cooperative (Potter and Badcock 2007;

Gillespie 2010). However, many cooperatives were simply appendages of the plantations and were only minimally responsive to smallholder needs.

High prices for crude palm oil (CPO) exports at the beginning of the biofuel boom in 2006–07 brought lobbying by companies to control 80 per cent of their areas, with only 20 per cent to go to smallholders, in what were called Partnership (Kemitraan) schemes.[9] This division of profits and control was legalised in Minister of Agriculture Regulation 26/2007 on Licence Guidelines for Plantation Businesses. Under Kemitraan and similar 'revitalisation' projects, plantations would work 20 per cent of the land on behalf of the smallholders. The smallholder 'partners' would receive small regular payments, amounting to much less income than if they had worked the land themselves. This income would only begin to reach the smallholders after the trees planted on their behalf started to bear fruit, and the fruit was sold to the estate mill. Despite its unfavourable financial aspects as far as smallholders were concerned, this scheme was the first to be made compulsory by the central government for companies that had previously had no smallholders.[10]

In 2013, Regulation 26/2007 was superseded by Regulation 98/2013, which altered the arrangements between plantations and smallholders. It specified that 20 per cent of a plantation's total income should be directed to smallholders *outside* (rather than *inside*) the plantation's licensed area. The aim was to encourage plantations to form partnerships with farmer cooperatives or other smallholder groups outside the plantation. It was unclear whether the members of the cooperative or the plantation would actually plant the oil palm. So far, few plantations have adopted the new scheme, partly because it is difficult to find suitable land, and partly because potential participants are expected to already be organised and have legal tenure over the land.[11]

I will now compare the two provinces of Riau and Central Kalimantan in terms of the plantation–smallholder relationship and what this means for local land tenure.

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9 This meaning of the word 'partnership' has negative connotations and the schemes would not qualify as 'FAIR' by the criteria of Aidenvironment (2014).

10 For a detailed analysis of the way one of these schemes works, see Gillespie (2010: Chs 4 and 7).

11 In its regulations for independent smallholder certification, the RSPO is ready to accept more traditional and semi-legal forms of tenure—a letter of land clarification from the subdistrict head (*surat keterangan tanah*, SKT) or even a letter from the village head—as proof of land ownership (Brandi et al. 2015: 309). Those forms of tenure might also be sufficient in this context.

THE POSITION IN RIAU: INDEPENDENT SMALLHOLDERS HAVE THE NUMBERS BUT HOW WELL ARE THEY MANAGING?

Riau's population (6.1 million in 2013) is of considerably mixed ethnicity. The 2010 census indicates that indigenous Melayu constitute just 33 per cent of the population, with minorities of Javanese/Sundanese (30.4 per cent), Batak (12.5 per cent), Minangkabau (12.2 per cent) and Banjarese (4 per cent) (BPS 2011). The Batak and Javanese/Sundanese groups have substantially increased their shares of the population since the 2000 census and their impact is strongly felt among the growing numbers of independent smallholders.

The most interesting statistic for the province is that in 2013 independent smallholders (*swadaya murni*) controlled an area of more than 1.1 million hectares of oil palm, more than the private companies and government estates combined, while the scheme or *plasma* smallholders formed a much smaller group (Dinas Perkebunan, Riau 2014).

Independent oil palm growers began to appear in Riau in the early 1990s. The numbers of independents soon eclipsed those of the *plasma* farmers as spontaneous migrants from North Sumatra (Batak and Jawa Medan) began moving into Riau (Nagata and Arai 2013: 79).[12] One of the reasons for the strong movement of former plantation labourers from North Sumatra to Riau was the lack of readily available land in North Sumatra for smallholder production (Hardjono 2001; Potter and Badcock 2004; Nagata and Arai 2013). There was a hiatus in plantation development later in the decade following the extensive fires in 1997, the Asian economic crisis in 1997–98 and the fall of the Suharto regime in 1998, with independent smallholders already controlling more oil palm land than the large estates (Casson 2000; Nagata and Arai 2013: 79).

One group of Toba Batak who settled in Tambusai (Rokan Hulu district) began arriving in 1992. They had sold their rubber land in North Sumatra and were seeking to expand into oil palm in Tambusai. They began buying land from the local Mandailing, descendants of a much earlier migration and now settled producers of swidden rice and rubber. While their oil palms were immature, the migrants supported them-

12 Jawa Medan are groups of former Javanese plantation workers, usually descendants of the 'contract coolies' who were recruited from Java to constitute the plantation labour force in colonial times. Many stayed on in North Sumatra, forming villages close to existing plantations, where they continued to work (Stoler 1985: 180–201; Li 2011). Their children began to move out and seek land of their own in the 1990s, while others joined transmigration schemes in nearby Riau or Jambi. Groups of Javanese evicted from Aceh during the civil war in that province in 2000–03 are also present in Riau.

selves by intercropping food crops such as corn, a practice forbidden on nearby plantations (Potter and Badcock 2004).

The rise of independent smallholders, which began in Riau and Jambi but is now occurring more widely, is shifting the boundaries between the huge estates and the tiny *plasma* holdings. While a comprehensive study of both *plasma* and independent smallholders indicates an average holding of 2–3 hectares (IFC 2013), many independent smallholders have managed to amass larger farms, while 60 per cent of *plasma* farmers also own independent smallholdings. There are also some medium-sized plantations in Riau, of 100–1,000 hectares, mainly owned by local elites and urban business interests.[13]

Associated with the increased numbers of independent smallholders are many private, standalone mills, which can take a high percentage of the produce, making it unnecessary for the smallholders to use the estate mills. The law requires mills to be located on the estates, so although these 'mills without plantations' (*pabrik kelapa sawit tanpa lahan*) are useful to the independent smallholders, as they often pay more for their fruit, they are strictly illegal. At the latest count, 86 such mills in Riau had been recommended for closure out of a total of 236 mills (Afrianto 2015). Some entrepreneurs have sidestepped the legal requirement for mills to be located on estates by planting small areas of oil palm of around 500 hectares, but installing mills with a much higher capacity.

As one would expect given that many independent smallholders have migrated from North Sumatra, districts close to North Sumatra, such as Rokan Hilir and Rokan Hulu, have high numbers of independents. But there are even higher numbers in the wealthy district of Siak, especially in the settlements established for poor Melayu farmers. The Siak I and Siak II settlements were laid out in 2004–05 across seven of Siak's 14 subdistricts, in 15 villages. The project received assistance from the Siak government, PTPN V (Riau's state-owned plantation company) and the Bogor Agricultural University (Institut Pertanian Bogor, IPB). The need for large areas of land meant that there was no alternative to placing the farmers on shallow peat soils. They were given legal title to 3 hectares of oil palm land and provided with good seed and subsidised fertiliser, but they were not permitted to sell their land. In March 2015 they still had to repay some of their credit but were doing well, although subsidised fertiliser is no longer available and handling the peat soils is difficult, given the risk of dry season fires. Many are now seeking more land outside the settlements to increase their security in meeting household costs (field visit,

13 In Pelalawan district, for example, plantation statistics indicate that almost one-third of holdings are 1,000 hectares or less, though not all of these are currently active.

March 2015). They are nevertheless in a much better position than others in the district who were not able to be accommodated by the Siak project.

The area and production of oil palm have burgeoned over the past decade. Although some of the increase has come from crop changes on smallholder farms (from rubber to oil palm) and production increments from the maturing of palms planted earlier, Riau's forests, especially its peat swamp forests, have borne the brunt of this expansion, while national parks are being encroached upon by waves of migrants.[14]

Do most independent smallholders in Riau experience adverse incorporation?

Most relevant to the question of adverse incorporation is the international price of CPO, which determines the payments to smallholders for their fresh fruit bunches. Prices have not only varied very markedly over the past 15 years but they also differ according to the average age of the fruit brought to the mill, with very young fruit fetching the lowest prices.

As Figure 14.1 indicates, CPO prices were very low from 2000 until the biofuel boom that began in 2006. Biofuel purchases brought about steep price rises in 2008, but prices then crashed in 2008–09 because of the global financial crisis. A further boom in 2011–12 encouraged independent smallholders to expand. These plantings are only now reaching harvestable age, unfortunately at a time of continuously falling prices.

During the years of high fruit prices, Indonesian oil palm smallholders, both scheme and independent, managed reasonably well, although their total holdings were generally smaller than those of their counterparts in Malaysia, Thailand, Brazil or Colombia (Potter 2015). More onerous regulations for those in the Kemitraan or 80/20 system, together with lower prices for all producers, have brought more difficult conditions. Comprehensive studies have identified smallholders' lack of access to high-quality seedlings, affordable fertiliser, loans and technical advice as a major factor in the production gap that has opened up between smallholders (especially independent smallholders) and plantations (IFC 2013; Lee et al. 2014; Brandi et al. 2015). I found that the same was true of the various districts my assistants and I examined in Riau, both in 2015 and in earlier field visits in 2012.

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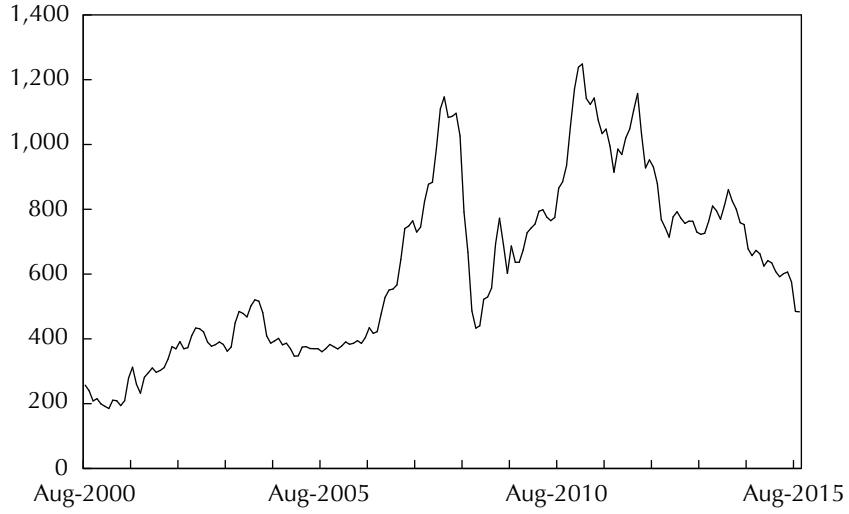
14 This encroachment is most marked in the case of the Tesso Nilo National Park in the districts of Pelalawan and Indragiri Hulu. Encroachment on the park to plant oil palm had already begun in 2002, and had grown to 53,530 hectares, more than 60 per cent of the park area, by 2013 (TNTN 2014). In one section of the park there are now 7,000 settlers, mainly Batak from North Sumatra, cultivating 2-hectare plots established by investors (interview with park director, 13 March 2015).

Figure 14.1 Monthly international crude palm oil prices, 2000–15 ($ thousand/tonne)



Source: Indexmundi.

When interviewed in March 2015, the head of the estate crops office in Indragiri Hulu district made a distinction between two groups of independent oil palm smallholders: those who were entirely reliant on oil palm and those who also had other occupations. The latter would include many government officers, elite villagers and investors from urban areas. The small farmers with only 2 hectares, most of them Batak and especially Melayu, suffered almost universally from low yields attributable to poor seed (*mariless*)[15] and lack of fertiliser. This led to low incomes, which they would attempt to boost by working as day labourers for the companies or their wealthier neighbours. The district had tried to help by supplying good seed, but the problem had become too large to be fixed easily. In Segati village on the border of the Tesso Nilo National Park, one Melayu grower proclaimed, 'I don't know where my seedlings came from and I cannot afford to use fertiliser: I just plant and pray!' (village interviews, 14 March 2015).

When we spoke to them in 2012, officials from the estate crops offices in Rokan Hilir and Rokan Hulu districts informed us of a similar program to provide seed to farmers with 2-hectare plots. If they organised themselves into groups, the farmers could sometimes also receive subsi-

15 This word is a pun on the name of the most reputable seed supplier, Marihat (North Sumatra).

dised fertiliser from the district government. However, in July 2012 oil palm farmers with 2 hectares and *mariless* seed could expect to produce only 2 tonnes of fruit per hectare per month, which at the going price for three-year-old fruit (Rp 1,000 per kilogram) would provide only Rp 2 million per hectare. This income was insufficient to pay workers to help with the harvest and meet household needs. It would not be sufficient to allow farmers to buy fertiliser; for that, they really needed 3–5 hectares. Most farmers in the Bagan Siapi-Api area of Rokan Hilir were local Melayu. In other subdistricts the spontaneous migrants, mainly Jawa Medan, had more experience with oil palm and more capital, so fared better (interview, 3 July 2012). It is sobering to note that the average price for three-year-old fruit in Riau has actually fallen since then—to Rp 500–700 per kilogram in August 2015, and as low as Rp 300 in some more distant places (Asdhiana 2015; Simanungkalit 2015). It was therefore worth only one-half or one-third as much per hectare in 2015 as in 2012.

In Rokan Hulu, the head of the estate crops office said the district government was trying to persuade farmers to remove their poorly performing *mariless* trees and replant with better hybrids. Many farmers working in oil palm at a low economic level were ignorant of basic cultivation methods and often had no formal legal land tenure. He said that of the ethnic groups in the district, including many migrants from North Sumatra, the Bataks were the best in terms of the ability to achieve high oil palm yields, followed by Javanese, local Mandailing and finally Melayu. The district had passed a regulation forbidding the large-scale distribution of oil palm seed to farmers without a government certificate of the seed's authenticity, and sellers could be jailed for ignoring it—yet the problem of cheap *mariless* seed remained (interview, 5 July 2012).

In conversation with some of our earlier Toba Batak respondents in Tambusai village, Rokan Hulu, we discovered that out of 500 families, around 30 per cent were landless, but worked for those who owned land. Most of the landowning families had 2 hectares, although one individual had managed to acquire 200 hectares, and another 80 hectares. The ordinary villagers complained of the difficulty of securing good seed, especially at the time when they were starting to plant, 15–18 years ago, when they were short of both money and knowledge. No agricultural extension officer had ever visited; nor had they ever received seed or fertiliser from the district government. When the time came to replant, they would try to replace the old, poorly yielding trees, using funds borrowed from credit unions operated by the churches. They were concentrating on intensifying production on their 2-hectare blocks and said that things had improved since they first arrived. They had managed to educate their children (many of whom had acquired professional qualifications to take them out of oil palm) and the road conditions were better, so it

had become easier to sell their fresh fruit bunches in all seasons (interviews with farmers in Bondar, Tambusai, 6 July 2012).

Discussion, Riau

As almost all mineral (non-peat) soil areas in Riau are occupied by oil palm and pulpwood plantations, what is left is the peat swamps and the parks and protected areas. Riau continues to provide land for Batak and Javanese migrants as its population climbs. As the parks are already under pressure, it seems certain that the remaining areas of peat swamp forest will be examined, not just by the large companies, but also by smallholders. During the extensive fires in August–September 2015, smallholders in Riau and South Sumatra and their supporters in Jakarta organised demonstrations calling for greater land rights, and promised to protect peat forest if given land to manage. They also asked the government to review problematic land permits, the aim being to strip delinquent companies of their lands and give these to local farmers (Saturi and Wijaya 2015).

Lee et al. (2013) argue that smallholders generally do not access the peat forests without the assistance of the plantations. One study that does note smallholders burning peat forest to clear it for planting identified two locations: Sinaboi (Rokan Hilir) and Dayun (Siak) (Cacho et al. 2014). In the first area new land was being opened to enable poor Melayu to move from fishing to farming, with help from the district authorities in digging drains; the Siak location involved second-generation transmigrants, also seeking land.

As the peat swamp environment is more difficult for smallholders to manage, greater intensification on existing holdings provides an alternative pathway, which is beginning to be followed by the better farmers. This will involve improved planting materials, greater access to fertiliser and better extension, so that independent farmers will be able to maximise the yields from their meagre holdings. As land has become scarcer, prices have risen, especially for land with mature oil palm. There is a considerable difference in the cost per hectare of newly opened land and land under 10-year-old oil palm in Rokan Hilir. Some farmers seeking cheaper land are beginning to look beyond Riau. One of the areas targeted is Central Kalimantan.

THE POSITION IN CENTRAL KALIMANTAN: WHY ARE THERE SO FEW SMALLHOLDERS?

Central Kalimantan came relatively late to oil palm. The crop arrived in most parts of the province only at the end of the 1990s, when neoliberal

policies had become popular and the government was in the process of legislating regional autonomy (decentralisation). While a few plantations adopted the cooperative system (KKPA), most did not. By 2002, 44 of 56 plantations in the province had no smallholder component, some simply recruiting their labour forces directly from Java (visit to PT Astra, West Kotawaringin, September 2002). The private investors preferred to buy land outright, paying the owners (limited) compensation. Those landowners were predominantly Dayaks holding land under traditional (customary) tenure, and engaged in making swiddens for food crops and producing rubber and rattan (Potter 2011: 175). Central Kalimantan has never had government-sponsored plantations.

The province experienced very rapid growth in oil palm cultivation between 2005 and 2010, when the area under cultivation more than doubled and Central Kalimantan moved ahead of its rival, West Kalimantan. The area devoted to oil palm has since stabilised at around 1.1 million hectares actually planted, although the area given out in concessions to 332 units has been estimated by the Indonesian Forum for the Environment (WALHI Kalteng) at 4.1 million hectares (Rompas 2015).[16] This may be described as a 'virtual land grab' (McCarthy 2010), as much of the land is still undeveloped. In some districts, such as South Barito and Kapuas, the area covered by oil palm permits exceeds the district area, causing overlaps and confusion (Palupi et al. 2014). Central Kalimantan still does not have an accepted land-use plan, with most of its oil palm zone technically designated as 'forest', even though much of it is already heavily degraded (Gnych and Wells 2014). While the first three permits needed by companies to initiate the planting and production of oil palm are issued by the districts, plantations must apply to the national Ministry of Forestry for the land to be excised from state forest status before they can legally obtain their final permit (the HGU) from the provincial authorities. Land that has not been excised from state forest status cannot be given out as smallholdings. Neither are plantations supposed to operate without the necessary permits, although a high proportion continue to do so.[17] This partly explains the small percentage of land cultivated by

16 Wahana Lingkungan Hidup Indonesia (WALHI) is an umbrella organisation of various local NGOs, with 479 member organisations, a central office in Jakarta and representatives in most provinces. WALHI Kalteng is the Central Kalimantan branch of the organisation.

17 In 2011, 282 of 325 plantation companies in Central Kalimantan were suspected of 'non-procedural' forest use, and were therefore operating illegally (press release from the Ministry of Forestry, cited in EIA/Telapak 2011: 4). Even the land for the famous Mega Rice Project in Kapuas district was never officially released for agricultural use (Colchester et al. 2011).

scheme smallholders (Larsen et al. 2012: 32), which is a direct result of the problems of land allocation experienced by the province.

However, it does not explain why many companies that have already obtained their HGUs have not moved to accommodate smallholders. Most of the large corporations involved in oil palm are represented in Central Kalimantan, including several from Malaysia, often with multiple holdings. It is regrettable, for example, that in the latest list of 101 plantations that were designated 'clear and clean' (that is, legal) in December 2014, only one of the six Wilmar and four Sime Darby plantations listed offered any land to smallholders (Dinas Perkebunan, Kalimantan Tengah 2015). In 2011, the governor of Central Kalimantan issued a decree requiring plantations to develop smallholdings (Provincial Regulation 5/2011 on the Sustainable Management of Plantation Businesses), after declaring that indigenous/customary land claims needed to be recognised, mapped and, if necessary, excised from estates.[18] So far, however, many plantations have remained recalcitrant and resisted such changes, despite weak attempts at government enforcement.

Like Riau, Central Kalimantan has experienced extensive transmigration, with close to 400,000 people arriving between 1960 and 2011. The most recent schemes operated from 2006 to 2011, the aim being to provide more labour to the oil palm plantations, but in 2013 the governor placed a moratorium on further transmigration (Karana 2013). Many of the new sites were in remote and difficult-to-cultivate locations and they were often on land already claimed by local Dayaks (Potter 2012; Karana 2013). As in Riau, this influx of people from outside the province was having an impact on the availability of land and the position of the indigenous people. But unlike in Riau, the overall population in Central Kalimantan remains limited in size: just 2.4 million in 2013 compared to Riau's 6.1 million. The average density of the population is also low, at only 16 people per square kilometre, but this includes the thinly populated areas of the north.

Although numbers are still low, some spontaneous migration is taking place from North Sumatra and Riau, of Batak and Jawa Medan. These newcomers, together with long-established transmigrants, are beginning to buy up land for oil palm from local Dayaks in the oil palm belt across the centre of the province. Ari Rompas, the head of WALHI Kalteng, is concerned that too much Dayak land is being sold to outsiders and the Dayak population is becoming marginalised. After selling their land to

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18 This anticipated the landmark decision of the Constitutional Court in 2012 that the forested lands of customary communities could not be under state control, and were therefore not available to be leased by corporations (Constitutional Court Decision 35/PUU-X/2012).

estates or private buyers for inadequate levels of compensation, Dayaks are only able to enter the industry as lowly paid casual workers. Moreover, no land is left for the next generation (interview with Ari Rompas, 6 March 2015). We were not able to obtain precise numbers of such private land buyers, but Rompas estimates that they control about 5 per cent of Central Kalimantan's oil palm land. While this is low by Riau standards, the trend is clear. It is especially notable in some leading oil palm districts, such as East Kotawaringin and Seruyan.

We interviewed a number of middle-level oil palm smallholders (those with more than 10 hectares) in the districts of East Kotawaringin (Parenggean and Cempaga Hulu subdistricts), Seruyan and Katingan in March 2015, including Batak, Javanese and Banjarese.[19] One Javanese smallholder was an ex-transmigrant who had focused on buying up land vacated by returning transmigrants. He had amassed 15 hectares since starting out in 1996 with 1 hectare of oil palm on a failed private plantation. As an independent grower, he was able to obtain good seed through the establishment in Sampit of a branch of Marihat, the famous seed supplier from North Sumatra. He suggested that Dayaks were not very interested in planting oil palm: they preferred rubber. Transmigrants who had also planted rubber were now replacing their rubber trees with oil palm, as rubber prices were even lower than those of oil palm.

Some of the Bataks were professional people who had planted oil palm for extra income. One doctor, who admitted buying his 22 hectares from various Dayaks, claimed he had advised them not to sell their land at low prices, as so many did. One of his brothers was the manager of a palm oil factory and had helped him purchase good land. He also knew of two other doctors who had bought land for oil palm. He noted that good land in Riau would cost Rp 120–130 million per hectare, whereas in Central Kalimantan the best land could be purchased for Rp 60 million per hectare—although that was for land without formal legal title, just a letter of land clarification (*surat keterangan tanah*, SKT) from the subdistrict head. Most of the land still belonged to Dayaks, who would sell what they described as 'empty land' (land without good forest) fronting

19 The Banjarese minority are considered 'local' because their ancestors arrived in the area a century or more ago. Some settled in West Kotawaringin in the mid-nineteenth century when the former Banjarmasin sultanate covered much of what is now Central Kalimantan. Others arrived from South Kalimantan in the early twentieth century, attracted by the high prices for wild rubber (*Dyera* sp, or *jelutung*) at the time (Potter 1988). Many of their descendants, still engaged in *jelutung* tapping, were displaced by the formation of the Tanjung Puting National Park in 1982 (Peter Howson, personal communication). While many remain poor, some have bought land for oil palm, including the owner of a large Banjarese restaurant in Cempaga Hulu.

the Katingan main road for Rp 10 million per hectare and land situated closer to Palangkaraya city for Rp 15 million per hectare.

A Batak agricultural officer in Cempaga Hulu noted that a number of Dayaks had started planting oil palm in that subdistrict, usually without technical assistance or proper knowledge of the crop, which meant that they would struggle to succeed. Other Dayaks could not move to oil palm because of the level of initial capital required. Batak and Jawa Medan were attracted to Central Kalimantan by the cheaper land prices, which were about half those in Riau. Cempaga Hulu had one village of recent Batak migrants, mainly from Riau. Although most only had 2 hectares, one farmer who had migrated from Riau in 2010 was managing 45 hectares for a family member who owned 300 hectares in various locations. He described the land bought from the Dayak owners as previously 'empty forest'. He told us that land prices in the subdistrict had risen from Rp 9 million per hectare in 2010 to Rp 30 million per hectare in 2015.

Some districts with very low proportions of smallholder land (according to the official records),[20] such as Kapuas (3.5 per cent), Seruyan (4.7 per cent), East Kotawaringin (7.0 per cent) and East Barito (7.3 per cent), have also experienced disproportionally high numbers of disputes with plantation companies. According to WALHI Kalteng, the largest number of conflicts erupted in East Kotawaringin, which recorded 37 per cent of the total (94 out of 252) but also had 45 per cent of the province's entire area of oil palm, with oil palm permits of various kinds covering almost half the district's land (Colchester et al. 2011; WALHI Kalteng 2015). Within East Kotawaringin, the subdistrict of Parenggean, where more than 20 companies hold permits over 60 per cent of the land, is the most extreme case (Potter 2012; Palupi et al. 2014).

In Kapuas, one dispute was over the kind of smallholder arrangements to be used. The estate offered a ratio of 70 per cent estate-controlled land (*inti*) to 30 per cent *plasma*-controlled land (under a Kemitraan scheme); the local people wanted a ratio of 30 per cent *inti* to 70 per cent *plasma* (under the earlier KKPA scheme). This led to a long stand-off during which roads into the estate were closed (fieldwork, 2012). The dispute in Kapuas was related to the many changes in land arrangements, which the farmers felt disadvantaged them.

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20 The source of the figures is Direktorat Jenderal Perkebunan (2014). One district, Lamandau, is recorded as having a 47.2 per cent share of smallholders, well above the average. This may be because it has large numbers of transmigrants. While there is no breakdown of smallholder numbers into independent and plantation-assisted smallholders, most presumably fall into the latter category, as figures for independents are simply not available.

Pollution from oil palm plantations is another common cause of disputes. In Seruyan district, for instance, run-off from plantations has destroyed the Banjarese fishing industry in the local lake, with companies refusing to provide either smallholder plots or estate work to affected villagers. Land expropriations by plantation companies, often with the precise purpose of reducing the land's value by bulldozing existing crops and trees, have been reported in a number of locations (Palupi et al. 2014). Such behaviour is called *garap selenong*: 'take now, talk later'. These land expropriations sometimes involve a new plantation company grabbing the 'second hectare' of a transmigrant group, as occurred in the Javanese transmigrant village of Biru Maju (East Kotawaringin) (Potter 2012).

We first visited the village of Biru Maju in 2012. By 2015, 10 years after the estate had seized their land, 90 per cent of the transmigrants in the village had managed to buy extra land in the district and had become independent smallholders. The losers from that process were the local Dayaks. Two families of Temuan Dayaks were living along the road not far from the village. Almost all of their land was gone. They were earning a precarious living working as casual labourers for various smallholders, but could only find employment for a few hours a day. They told us that in another transmigrant village nearby, several Javanese each owned plots of 100 hectares, while a Chinese investor from Batam (Riau Islands) had 74 hectares.

One of the most egregious examples of a land grab occurred in the still-forested district of Gunung Mas, where an oil palm company, banned from buying land from local communities, still managed to take over a communal forest by encouraging each of the owners to 'mark out a boundary' and then paying each individual a low, flat fee per hectare for the now 'private' land (EIA 2014: 15–18). This clearly did not meet the standard for mapping and evaluating a customary land claim. Once again the local Dayaks were the losers, as the value of the timber on the property (appropriated by the company) was estimated to be worth 20 times the amount paid to the people for their land (EIA 2014: 17).

Dayaks (both estate workers and neighbouring farmers) have generally been poorly treated by estate managers. Most have only been able to enter the industry as lowly paid casual workers, after selling their land outright to the estates for inadequate levels of compensation. The Dayaks have become accustomed to receiving instant cash income from land sales, so the 80/20 Kemitraan arrangements provided by some plantations are not a good fit for them. Potential smallholders must wait at least three years until their crops mature and any profit accrues. Dayaks say they cannot wait that long, so they sell the land tied up in Kemitraan arrangements, too.

Discussion, Central Kalimantan

The oil palm industry in Central Kalimantan is largely dominated by the big corporations, with the indigenous Dayaks in particular being disadvantaged. As some Dayaks would now like to become independent growers, care should be taken to provide them with the kind of technical and financial assistance they will need. The project in Siak district, Riau, designed to help poor Melayu farmers includes a prohibition on farmers selling their land. Such a restriction could be tried with similar projects in Central Kalimantan. The activities of outsiders in buying Dayak land should also be monitored more carefully. Despite still being on a relatively small scale, they are nonetheless contributing to the marginalisation of the indigenous Dayak people, which is continuing unabated.

One new initiative emanating from Constitutional Court Decision 35/PUU-X/2012 is the Dayak Misik scheme, which has been endorsed by the provincial government. It aims to assist Dayaks to acquire land, initially through the Indigenous Dayak Council (Dewan Adat Dayak), a Dayak cultural organisation. The plan is to grant each family 5 hectares of land for farming, and each village 10 hectares of customary forest (*hutan adat*) for communal use (Dewan Adat Dayak 2014; Adams 2015). Although the scheme is mainly intended to benefit Dayaks living a subsistence lifestyle in the more remote forested areas, it is not restricted to such villages.[21] However, while Dayaks can sign up to receive their 5 hectares, the question of where such lands may be found is problematic in the oil palm belt, where location permits (even if presently undeveloped) cover such wide areas. Care will also be needed to prevent these lands from being sold to outsiders—one researcher saw an application for such land signed by a Javanese (Yayan Indriatmoko, personal communication).

IS THE PLANTATION MODEL SHIFTING TOWARDS SMALLHOLDERS, AND ARE GOVERNMENT POLICIES MAKING A DIFFERENCE?

Although the new Joko Widodo administration has made promises of land reform, specifically to convert degraded land from the forest estate to agricultural use and return 9 million hectares of land to communities, so far the planning appears piecemeal and the implementation both slow and complex. Some important pathways are becoming clearer, however.

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21 In June 2015, villagers in remote Muring Raya district took advantage of the Dayak Misik scheme to lodge a land claim against mining company BHP Billiton, which operates a large coalmine in the district (Denton 2015).

For example, communities will be included in forest management and large areas are likely to be transferred to traditional communities, away from state control (in compliance with Constitutional Court Decision 35/PUU-X/2012). The One Map initiative, when implemented, should help to resolve boundary questions and reduce illegal licensing and conflict (see Chapter 5 by Afiff). In addition, provincial governors have been given the power to scrutinise the issuance of oil palm permits by sub-district heads. The Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) is to initiate a review of all oil palm permits in 24 provinces, which 'has the potential to make a significant impact on current and future compliance' (Daemeter Consulting 2015: 47). Such changes should be beneficial to smallholders and villagers alike, and help to rein in company excesses, although they will take time to take effect.

Some contradictory tendencies may also be observed, largely related to the ISPO and its changing policies, as codified in the revised ISPO standard: Minister of Agriculture Regulation 11/2015 on the Indonesian Sustainable Palm Oil Certification System. The latest deadline for plantation companies to obtain ISPO certification was 25 September 2015, with the threat that their business licences could be revoked if they failed to respond after three warnings (Waris 2015). However, in conjunction with plans for an increased emphasis on the use of CPO for biodiesel, the ISPO has declared that plantations producing palm oil solely for the biodiesel supply chain do not need to obtain certification (Daemeter Consulting 2015: 28). No details have been provided on how this would work, but it does raise the possibility of a two-tiered structure for the industry in which the larger, export-focused corporations would implement their sustainability pledges of 'no deforestation, no peat, no exploitation', while the more locally oriented companies would be exempt from meeting the industry's sustainability requirements.[22] It might also mean that smallholders are relegated to this second tier, therefore potentially missing out on the benefits of certification, which hopefully would include being able to sell their fruit at higher prices.

The government has promised, as a presidential priority, to use taxes raised on exports of CPO to replant smallholder oil palm land with higher-quality seedlings, through the Crude Palm Oil Support Fund (Daemeter

22 The Indonesia Palm Oil Pledge agreed to by all the big firms and the Indonesian Chamber of Commerce has provoked opposition from the government, which sees the corporations as overstepping their limits in attempting to dictate a 'no deforestation' policy. Government officials have suggested that the 'no deforestation' rule will disadvantage smallholders, although observers argue it is more the prospects for new oil palm developments in forested Papua that is behind the government's opposition to the pledge (Saturi 2015).

Consulting 2015). This is of course badly needed to improve yields and may reduce the pressure to expand oil palm smallholdings, but it will not address the general shortage of available land. It does at least indicate that the Widodo administration is willing to take some responsibility for improving the condition of smallholders, a responsibility previously just handed over to the companies, with little beneficial outcome.

It seems unlikely that the plantation model will disappear from the oil palm scene in Indonesia, even though Byerlee (2014) calls the presence of plantations a 'temporary aberration'. The call for new company–community partnerships, as recommended by Byerlee and others as the most practical way forward, is partly being answered by the experiments in testing the guidelines for smallholder certification in Riau and West Kalimantan (UNDP 2015). Just how important these new schemes will prove to be depends on the outcomes. Again the ISPO is opting out, suggesting that neither scheme nor independent smallholders need to be certified, although they may work towards certification. The Indonesian Palm Oil Platform (InPOP) is encouraging smallholders to form cooperatives and enter into partnerships with companies to avoid conflicts over land.[23]

A more even distribution of benefits between the communities and the corporations does seem to be possible if the new administration can act decisively to realise the potential for agrarian reform. The need is urgent: Sawit Watch noted 776 conflicts between companies and communities in 2015. Surambo, the director, blames the government for not attempting to clear up the imbalance in the ownership of land, specifically by cancelling permits over oil palm areas that remain undeveloped (Sawit Watch 2016). This is an obvious area in which action is needed. Only by releasing such land can the palm oil industry be seen to be really shifting in favour of smallholders, as Byerlee predicted, but the initiative must come from the government.

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23 Launched in October 2014 by the Ministry of Agriculture, InPOP aims to provide a national platform for all stakeholders—public, private, civil society and community—to develop a national plan of action for sustainable palm oil. It has four working groups, focusing on smallholder capacity; environmental management and monitoring; governance and mediation; and ISPO certification and market access (UNDP 2014; InPOP 2015). The suggested timeframe for the action plan is five years. It will be interesting to see if this initiative turns out to be more than just a talkfest.

REFERENCES

Adams, B. (2015) 'Program Dayak Misik tetap berjalan' [Dayak Misik program is on track], *Media Kalimantan*, 2 March.

Afrianto, D. (2015) 'Dianggap kangkangi peraturan, 86 PKS di rekomendasikan pansus ditutup', [In line with the overarching regulation, committee recommends that 86 oil palm factories (*pabrik kelapa sawit*) be closed], *riaupos.co*, 16 October.

Aidenvironment (2014) 'Fair company–community partnerships in palm oil development', OXFAM Discussion Papers, Amsterdam, May.

Ansam, H. (2015a) 'Sertifikasi ISPO untuk petani swadaya di Riau dimulai' [ISPO certification of independent smallholders in Riau has begun], *GoRiau.com*, 26 January.

Ansam, H. (2015b) 'UNDP, dirjenbun dan disbun Riau survei sertifikasi ISPO petani swadaya' [UNDP, director-general of estate crops and Riau estate crops office to survey ISPO certification of independent smallholders], *GoRiau.com*, 11 February.

Asdhiana, I.M. (2015) 'Harga sawit anjlok jadi Rp300 per kg di tingkat petani' [Price of oil palm drops to Rp 300 per kilogram at the farm gate], *Tribunpekanbaru.com*, 19 August.

BPS (Badan Pusat Statistik) (2011) *Kewarganegaraan, Suku Bangsa, Agama, dan Bahasa Sehari-hari Penduduk Indonesia* [Nationality, ethnicity, religion and everyday language of Indonesia's population], Statistics Indonesia (BPS), Jakarta.

Brandi, C., T. Cabani, C. Hosang, S. Schirmbeck, L. Westermann and H. Wiese (2015) 'Sustainability standards for palm oil: challenges for smallholder certification under the RSPO', *Journal of Environment and Development*, 24(3): 292–314.

Byerlee, D. (2014) 'The fall and rise again of plantations in tropical Asia: history repeated?', *Land*, 3(3): 574–97.

Byerlee, D., D. Kyaw, S. Thein and L.S. Kham (2014) 'Agribusiness models for inclusive growth in Myanmar: diagnosis and ways forward', paper presented at the 2014 World Bank Conference on Land and Poverty, World Bank, Washington, DC, 24–27 March.

Cacho, O., S. Milne, R. Gonzalez and L. Tacconi (2014) 'Benefits and costs of deforestation by smallholders: implications for forest conservation and climate policy', *Ecological Economics*, 107: 321–32.

Casson, A. (2000) 'The hesitant boom: Indonesia's oil palm subsector in an era of economic crisis and political change', Occasional Paper No. 29, Center for International Forestry Research (CIFOR), Bogor.

Colchester, M., N. Jiwan, P. Anderson, A. Darussamin and A. Kiky (2011) 'Securing high conservation values in Central Kalimantan: report of the field investigation in Central Kalimantan of the RSPO Ad Hoc Working Group on High Conservation Values in Indonesia', Roundtable on Sustainable Palm Oil (RSPO), 6 July.

Daemeter Consulting (2015) 'Indonesia's evolving governance framework for palm oil: implications for a no deforestation, no peat palm oil sector', Daemeter Consulting, Bogor, August.

Davis, G. (1988a) 'The Indonesian transmigrants', in J. Denslow and C. Padoch (eds) *People of the Tropical Rain Forest*, University of California Press: 143–53.

Davis, G. (1988b) 'Indonesia: the transmigration program in historical perspective', World Bank Country Study, Washington, DC.

Denton, J. (2015) 'Kalimantan villagers lodge land claim against BHP Billiton coal project', *Jakarta Globe*, 14 June.

Dewan Adat Dayak (2014) 'Forum koordinasi kelompok tani "Dayak Misik" Kalimantan Tengah' [Coordinating forum of the farmers' group 'Dayak Misik' Central Kalimantan], Indigenous Dayak Council (Dewan Adat Dayak), Palangkaraya.

Dinas Perkebunan, Kalimantan Tengah (2015) 'Perkembangan usaha perkebunan besar clear and clean (telah memiliki izin pelepasan kawasan hutan dan/atau hak guna usaha) provinsi Kalimantan Tengah posisi 31 Desember 2014' [Clear and clean development on the part of the large plantations (already possessing their excision from the forest estate and/or planting permit) Central Kalimantan: the position at 31 December 2014], Estate Crops Office (Dinas Perkebunan), Government of Central Kalimantan Province, Palangkaraya.

Dinas Perkebunan, Riau (2014) *Statistik Perkebunan Provinsi Riau 2013* [Estate Crop Statistics Riau Province 2013], Estate Crops Office (Dinas Perkebunan), Government of Riau Province, Pekanbaru.

Direktorat Jenderal Perkebunan (2014) *Statistik Perkebunan Indonesia 2013–2015* [Tree Crop Estate Statistics of Indonesia 2013–2015], Directorate-General of Estate Crops (Direktorat Jenderal Perkebunan), Jakarta.

EIA (Environmental Investigation Agency) (2014) 'Permitting crime: how palm oil expansion drives illegal logging in Indonesia', EIA, London and Washington, DC, December.

EIA/Telapak (Environmental Investigation Agency/Telapak) (2011) 'Caught REDD handed', EIA and Telapak, London and Bogor. Available at www.eia.org

Gillespie, P. (2010) 'Politics, power and participation: a political economy of oil palm in the Sanggau district of West Kalimantan, Indonesia', PhD thesis, Australian National University, Canberra.

Gnych, S. and P. Wells (2014) 'Land use in Central Kalimantan: combining development and sustainability goals for land optimization', Center for International Forestry Research (CIFOR), Bogor, March.

Gunawan (2013) 'In a first for Indonesia, independent smallholders receive RSPO certification', WWF-Indonesia, Jakarta, 1 August.

Hardjono, J. (1986) 'Transmigration: looking to the future', *Bulletin of Indonesian Economic Studies*, 22(2): 28–52.

Hardjono, J. (2001) 'Ethnic identity, land use and resource claims', unpublished paper for the InFocus Programme on Socio-economic Security, International Labour Office (ILO).

IFC (International Finance Corporation) (2013) 'Diagnostic study on Indonesian oil palm smallholders: developing a better understanding of their performance and potential', IFC, Jakarta, September.

InPOP (Indonesian Palm Oil Platform) (2015) *Indonesian Palm Oil Platform (InPOP) Newsletter*, Issue 01, Ministry of Agriculture and United Nations Development Programme (UNDP).

Karana, W.W. (2013) 'Kalimantan Tengah moratorium transmigrasi' [Moratorium on transmigration in Central Kalimantan], *Tempo.co*, 12 February.

Larsen, R.K., M. Osbeck, N. Jiwan, A. Rompas, J. Nito and A. Tarigan (2012) 'Competing water claims in biofuel feedstock operations in Central Kalimantan', Working Paper 2012-6, Stockholm Environment Institute, Stockholm.

Lee, J.S.H., S. Abood, J. Ghazoul, B. Barus, K. Obidzinski and L.P. Koh (2013) 'Environmental impacts of large-scale oil palm enterprises exceed that of smallholdings in Indonesia', *Conservation Letters*, 0(2013): 1–9.

Lee, J.S.H., J. Ghazoul, K. Obidzinski and L.P. Koh (2014) 'Oil palm yields and incomes constrained by harvesting practices and type of smallholder management in Indonesia', *Agronomy for Sustainable Development*, 34(2): 501–13.

Li, T.M. (2011) 'Centering labor in the land grab debate', *Journal of Peasant Studies*, 38(2): 281–98.

Li, T.M. (2015) 'Social impacts of oil palm in Indonesia: a gendered perspective from West Kalimantan', Occasional Paper No. 124, Center for International Forestry Research (CIFOR), Bogor.

Lubis, A. (2008) *Kelapa Sawit (Elaeis guineensis* Jacq.*) di Indonesia* [Oil palm (*Elaeis guineensis* Jacq.) in Indonesia], second edition, Pusat Penelitian Kelapa Sawit, Medan.

McCarthy, J.F. (2010) 'Processes of inclusion and adverse incorporation: oil palm and agrarian change in Sumatra, Indonesia', *Journal of Peasant Studies*, 37(4): 821–50.

McCarthy, J.F., P. Gillespie and Z. Zen (2012) 'Swimming upstream: local Indonesian production networks in "globalized" palm oil production', *World Development*, 40(3): 555–69.

Nagata, J. and S. Arai (2013) 'Evolutionary change in the oil palm plantation sector in Riau province, Sumatra', in O. Pye and J. Bhattacharya (eds) *The Palm Oil Controversy in Southeast Asia: A Transnational Perspective*, Institute of Southeast Asian Studies, Singapore: 76–96.

Otten, M. (1986) '"Transmigrasi": from poverty to bare subsistence', *Ecologist*, 16(2–3): 71–6.

Palupi, S., P. Prasetyohadi, C. Pahun, A.S. Kusni, K. Sulang, J. Jenito and D. Warnadi (2014) *Industri Perkebunan Sawit dan Hak Asasi Manusia: Potret Pelaksanaan Tanggung Jawab Pemerintah dan Korporasi terhadap Hak Asasi Manusia di Kalimantan Tengah*, published in English as *Oil Palm Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan*, Institute for Ecosoc Rights, Jakarta.

Potter, L. (1988) 'Indigenes and colonisers: Dutch forest policy in south and east Borneo (Kalimantan), 1900 to 1950', in J. Dargavel, K. Dixon and N. Semple (eds) *Changing Tropical Forests: Historical Perspectives on Today's Challenges in Asia, Australasia and Oceania*, Centre for Resource and Environmental Studies, Australian National University, Canberra: 127–53.

Potter, L. (2011) 'Agrarian transitions in Kalimantan: characteristics, limitations and accommodations', in R. de Koninck, S. Bernard and J.F. Bissonnette (eds) *Borneo Transformed: Agricultural Expansion on the Southeast Asian Frontier*, NUS Press, Singapore: 152–202.

Potter, L. (2012) 'New transmigration "paradigm" in Indonesia: examples from Kalimantan', *Asia Pacific Viewpoint*, 53(3): 272–87.

Potter, L. (2015) 'Managing oil palm landscapes: a seven-country survey of the modern palm oil industry in Southeast Asia, Latin America and West Africa', Occasional Paper No. 122, Center for International Forestry Research (CIFOR), Bogor.

Potter, L. and S. Badcock (2004) 'Tree crop smallholders, capitalism and *adat*: studies in Riau province, Indonesia', *Asia Pacific Viewpoint*, 45(3): 341–56.

Potter, L. and S. Badcock (2007) 'Can Indonesia's complex agroforests survive globalisation and decentralisation? Sanggau district, West Kalimantan', in J. Connell and E. Waddell (eds) *Environment, Development and Change in Rural Asia-Pacific: Between Local and Global*, Routledge Pacific Rim Geographies, London and New York, NY: 167–85.

Potter, L. and J. Lee (1998) 'Tree planting in Indonesia: trends, impacts and directions', Occasional Paper No. 18, Center for International Forestry Research (CIFOR), Bogor.

Raghu, A. (2014) 'Labor crunch hurts Malaysian palm oil growers as Indonesians stay home' *Reuters*, 27 April.

Rompas, A. (2015) 'Pengelolaan gambut dan konflik agraria di Kalimantan Tengah' [Peat development and agrarian conflict in Central Kalimantan], presentation, Indonesian Forum for the Environment Central Kalimantan (WALHI Kalteng), Palangkaraya, 6 March.

Saturi, S. (2015) 'Komitmen lingkungan dinilai terlalu berat, pemerintah khawatir IPOP hambat bisnis' [Environmental commitments are becoming too hard, government is worried IPOP will hamper business], *Mongabay*, 28 August.

Saturi, S. and T. Wijaya (2015) 'As haze chokes Sumatra, farmers ask Jokowi for greater land rights', *Mongabay*, 28 September.

Sawit Watch (2016) '2015, konflik di perkebunan capai 776 kasus' [In 2015, plantation conflicts reached 776 cases], *InfoSAWIT*, Jakarta, 2 January.

Simanungkalit, B. (2015) 'Harga sawit turun, disbun meminta petani untuk berasosiasi' [As price of palm oil has dropped, government plantation office asks farmers to form associations], *Tribunpekanbaru.com*, 24 August.

Solidaridad (2013) 'Financial literacy and agricultural training for Indonesian oil palm smallholders', Solidaridad, Utrecht, 28 October.

Stoler, A.L. (1985) *Capitalism and Confrontation in Sumatra's Plantation Belt, 1870–1979*, Yale University Press, New Haven, CO and London.

TNTN (Taman Nasional Tesso Nilo) (2014) 'Taman Nasional Tesso Nilo' [Tesso Nilo National Park], Directorate-General of Forest Protection and Nature Conservation (Direktorat Jenderal Perlindungan Hutan dan Konservasi Alam), Ministry of Forestry, Jakarta.

UNDP (United Nations Development Programme) (2014) 'Introducing national commodity platforms', UNDP Green Commodities Programme, UNDP, November.

UNDP (United Nations Development Programme) (2015) 'Indonesia kicks off scheme for palm oil farmers to meet new sustainability standards', press release, UNDP, 24 February.

WALHI Kalteng (Wahana Lingkungan Hidup Indonesia Kalimantan Tengah) (2015) 'Penglolalan gambut dan konflik agraria di Kalimantan Tengah' [Peat management and agrarian conflict in Central Kalimantan], Powerpoint presentation, Indonesian Forum for the Environment Central Kalimantan (WALHI Kalteng), Palangkaraya, 6 March.

Waris, G. (2015) 'Sertifikat ISPO, diberi waktu hingga 25 September 2015' [Companies given until 25 September 2015 to obtain ISPO certificate], *Berita2Bahasa*, 11 May.

15 Beyond special autonomy and customary land rights recognition: examining land negotiations and the production of vulnerabilities in Papua

Laksmi Adriani Savitri and Susanna Price

The growing international rush for land by both state and private investors, which has accelerated since the global food price crisis of 2007–08, has raised concerns about the well-being—and survival—of people who depend on the land for their food security, community cohesion and livelihoods (Narula 2013).[1] Opinions differ on the extent to which national law and international standards on human rights or resettlement safeguards can protect such people given the overwhelming power dynamics at play in land negotiations and land transfer in the context of escalating global competition for control of land (see Chapters 4 and 13 of this volume). Without formal legal or legalisable title to land,[2] such people often face daunting odds in negotiating their futures with powerful investors and developers backed by state interests and sharp legal advisors making use of complex land transfer mechanisms (Cotula et al. 2009, 2011). In other cases, even having legal title does not necessarily

1 Markets for agricultural commodities appear to have become increasingly volatile, and therefore less reliable for net food-importing countries, particularly following the decision by many large food-exporting countries to ban exports or to raise export levies during the spring of 2008. This has prompted resource-poor but cash-rich countries to turn to large-scale acquisition or rental of land to achieve food and energy security (Cotula et al. 2009; Cotula et al. 2011).

2 Less than half of Indonesia's non-forest land parcels had been registered for title by November 2014 (see Chapter 3 by Bedner).

ensure the future well-being of landowners. In the post-agrarian reform situation in the Philippines, for example, the granting of land titles over customary lands has facilitated land transfer but not welfare transfer (Borras 2001, 2006; Gutierrez and Borras 2004).

Cotula et al. (2009: 7) identify two factors that may influence the extent to which the presence or absence of land title can lead to socio-economic insecurity. First, significant gaps between written law and the reality on the ground may result in major costs being internalised by local people and make it difficult for investor companies to deal with the consequent local tensions. Second, an absence of legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare leaves local people vulnerable. In this chapter we examine the complexities of these factors within a context of escalating pressure for large-scale land investment and a lack of formal, legal forms of land and resource tenure for customary landowners in Papua, Indonesia.

We use the Merauke Integrated Food and Energy Estate as a case to exemplify the large-scale resource extraction projects that have been designed and implemented in Papua with the goal of establishing peace through economic development. This idea of large-scale investment to create peace and economic development in Papua dates back to 1967, when the first contract with the Freeport-McMoRan resource extraction company was signed. In setting up this model, Indonesia's New Order government granted Freeport, one of the largest US mining corporations, a generous land concession, together with sweeping powers as principal concession developer and de facto administrator of the area around its mine in what is now Papua province. The government waived requirements for the company to meet environmental laws and to compensate customary owners for the loss of resources, subsistence, income and livelihoods. The Indonesian army provided security for project assets and personnel.

The model featured enormous wealth creation for the company, the government and local elites, but little in the way of economic growth, industrial and technical advancement, and viable local commercial markets (Rifai-Hasan 2010). Almost 50 years later, the Amungme and the Kamoro, who live around the mine site, essentially remain disadvantaged, underprivileged and disenchanted. The mine disrupted their traditional culture, fracturing tribes along generational lines. Cultural differences led to misunderstandings, resentment and inappropriate development programs. Freeport created a culture of dependency and divisions among the tribes (Amiruddin and De Soares 2003; De Soares 2004: 139; Rifai-Hasan 2010: 134). Overall, the massive resource rents from Papua did very little to benefit the local people (Resosudarmo and Jotzo 2009).

Learning from the bad experiences with resource extraction and aiming to address the marginalisation of the Papuan people, Law 21/2001 on Special Autonomy for Papua (the Special Autonomy Law) attempted to provide indigenous Papuans with a better negotiating position on their resource-use and ownership rights than had prevailed in previous decades. The law uses the term *hak ulayat*—literally, 'communal right'—to define the collective rights of customary communities (article 1(s)).[3] It confirms that, in addition to such collective customary rights, Papuans may hold individual proprietary land rights and title.

A decade and a half after the promulgation of the Special Autonomy Law, distrust of its capacity to achieve its stated aim to 'empower' indigenous Papuans has hardened (Chauvel and Bakti 2004; De Soares 2004; McGibbon 2004; Widjojo et al. 2010; Tebay 2012). Despite this, President Joko Widodo's administration still deploys a logic of 'backwardness and in need of economic growth', continuing the assumption of Papua's underdevelopment from the New Order era (Koentjaraningrat 1994). This act of 'business as usual' in dealing with Papuan grievances raises questions about the status of the Special Autonomy Law, its interpretation, and its effectiveness in recognising, strengthening and protecting indigenous Papuans' land and resource rights. In this chapter we argue that the capability of the law to address reproductions of vulnerability in the process of large-scale land and resource transfers needs to be examined in order to understand its weaknesses. Articles 1, 42–43 and 67 of the Special Autonomy Law, together with its enabling regulation, Papua Province Special Regulation 23/2008 on Communal and Individual Land Rights of Customary Law Communities, aim to discriminate in favour of indigenous Papuans and strengthen their land and other resource rights. However, the effectiveness of the legislation in practice, during negotiations between indigenous Papuans and large corporations concerning land and resource use, has never been examined closely.

By highlighting land and resource negotiations, we expect to reveal the convergence between local, national and international perspectives

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3 The term *hak ulayat* was first used in Law 5/1960 on Basic Agrarian Principles, but without a clear definition. The first legal definition is given in Minister of Agrarian Affairs Regulation 5/1999, which states that 'An *ulayat* right […] concerns the authority that […] a certain *adat* law community enjoys over a specific territory that forms the living environment for its members to make use of its natural resources, including land […], which arises from the physical and spiritual ties, passed from generation to generation and uninterrupted, between the *adat* law community and the said area'. *Ulayat* is a word from the Minangkabau language; other words are used elsewhere in Indonesia to express much the same concept (Warman 2010: 39).

on land in Papua and West Papua provinces.[4] We examine the extent to which the recognition of indigenous Papuans' collective rights to resources, including land, has given indigenous communities more control over their resource base and lessened socio-cultural disruption, leading to better livelihoods and living standards. We begin by outlining the main provisions of the Special Autonomy Law, its referents to international policy standards, its intentions on resource rights recognition and its efforts to address indigenous Papuan experiences and aspirations. We then take a detailed case from the food sector in Papua to examine how well the law's recognition of customary rights has been realised in local spaces. This is a recent project with a long genesis, the huge Merauke Food and Energy Estate project in Papua province. We discuss this model, the negotiated outcomes and the impacts, examining the question of whether the recognition of collective customary use rights has boosted indigenous negotiating positions.

THE SPECIAL AUTONOMY LAW AS A FRAMEWORK FOR NEGOTIATING RESOURCE DEALS

Principles of the Special Autonomy Law

Law 21/2001 on Special Autonomy for Papua and its implementing regulation define Papuans as indigenous peoples. The law aims to 'empower' and to protect the rights of Papua's indigenous peoples through an independent governance structure, an indigenous judicial system and indigenous resource management rights. It recognises various indigenous rights, including the right of the collective community to use land and other resources, and to be compensated in case of loss. It requires recognition of and respect for both the individual proprietary rights and the collective rights (*hak ulayat*) of a customary community (article 42), and states that 'negotiations between the provincial/district/municipality governments and investors must involve the customary community […] in the context of empowering the customary community to play a role in the economy' (article 42(3–4)).

Crucially, article 43 of the Special Autonomy Law calls on the government of Papua to recognise, respect and protect the customary rights of the indigenous peoples of Papua (article 43(1)), on the customary com-

4 When the Special Autonomy Law was approved in 2001, 'Papua' included both Papua province and West Papua province, which were established in 2002 and 2004 respectively. In this chapter we use 'Papua' to signify both provinces, unless specified otherwise.

munity to perform the obligations inherent to customary rights (article 43(3)) and on provincial regulations to stipulate the detailed arrangements for the protection of customary rights and for compensation (article 43(4)). The law adds that:

> The utilisation of customary rights for government and/or private party interests shall be conducted through deliberation to reach a consensus between the customary community and the parties who need the land and should be accompanied by compensation in the form of cash, land substitution, resettlement or shares (article 43(4)).

The recognition of *hak ulayat* as an organising principle for resource use, decisions on resource management, sanctions on resource misuse and negotiations on resources, including land, represents an important milestone for recognising indigenous rights in Indonesia. While stopping short of requiring formal legal title for communities' collective resources, the Special Autonomy Law defines *hak ulayat* as a 'communal right controlled by a certain customary community over a specific area, including the right to utilise the land, forest and water and all their contents' (article 1(s)). This definition sets out a clear basis against which the full resource use for income and livelihoods can be mapped and managed and, in the event of transfer, losses of both assets and income can be calculated for compensation purposes. Moreover, the law requires improvements in the living standards and livelihoods of Papua's indigenous inhabitants. Noting past inequities, for example, it aims to use 'natural wealth management' to improve the living standards of the indigenous community (consideration and article 1), by allocating 80 per cent of non-tax mining, forestry and fishery revenue and 70 per cent of oil and gas revenue to Papuan development (article 34).

The Special Autonomy Law invokes international standards by offering 'protection and appreciation of the fundamental rights of indigenous people, human rights, supremacy of the law, democracy, ethics and morals, pluralism, and equality of position, rights and duties as a citizen' (preamble). It also proposes 'clean, organised, transparent and accountable government' (article 67(1)). Subsequently, Indonesia signed up to the 2007 United Nations Declaration on the Rights of Indigenous Peoples, which requires governments to obtain the free, prior and informed consent (FPIC) of their people to developments that will affect them. The detail of the UN declaration and the right to FPIC has yet to be addressed within the framework of the Special Autonomy Law.

Implementation of the Special Autonomy Law

Together with its enabling regulation (Papua Province Special Regulation 23/2008), the Special Autonomy Law aims to link customary law

on land and resource rights with national law. National law has been evolving quickly, with recent initiatives on communal land titling presenting major new opportunities for indigenous peoples in resource management.[5] These have strengthened the legal basis for recognising the rights of indigenous peoples, although the challenge of developing and implementing the necessary supporting technical guidelines and local regulations remains.

In recognising the collective rights of customary communities (*hak ulayat*), the state recognises indigenous Papuans' right to use (but not necessarily to own) the land and other resources (usufruct rights). Under the Special Autonomy Law, the claim of indigeneity is the basis for recognising indigenous Papuans' right to use land and other resources, but the claim of ownership still has to be gained through land titling. According to Papuan perceptions of their own customary land law, meanwhile, Papuans are the *tuan tanah*—the owners of every inch of land in Papua. Under customary law, indigenous Papuan landowners claim every tree, fish and animal in the forest, giving them the right to demand compensation payments and fees for the use of those assets, and to impose sanctions if they are used without their consent.

Constitutional Court Decision 35/PUU-X/2012 resolves the long-standing contradiction between these two land access regimes (customary law and national law) by declaring that customary forest (*hutan adat*) is not state forest (*hutan negara*), but rather forest land owned and managed by a customary community. The claims of indigenous peoples to ownership of forest areas are not approved automatically, however; rather, they are achieved through negotiation of various processes, the most complicated being the procedure for a district or provincial government to recognise customary forest ownership, as outlined in Papua Province Special Regulation 23/2008 (articles 2–5).

The procedure for establishing the legitimacy of a land claim is as follows. First, a provincial government or a district government acknowl-

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5 These include Constitutional Court Decision 35/PUU-X/2012, which provides the framework for full recognition of collective indigenous rights and management of the ancestral domain inside the forest zone; Joint Ministerial Regulation 79/2014 of the Ministers of Home Affairs, Forestry and Public Works and the Head of the National Land Agency, which harmonises requests for various kinds of land rights; Law 6/2014 on Villages, which opens up the possibility for villages to become '*adat* villages' and thus to (re)gain control of their land under the right of avail; and Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015, which recognises communal land ownership rights of indigenous communities and highlights the need for government to protect those rights (see Chapter 3 by Bedner and Chapter 4 by Fay and Denduangrudee).

edges that customary land-use rights may exist, although in each specific case this must be proven and justified by scientific research. Second, a multi-disciplinary research team is established to investigate whether a customary community exists in a specific location. Third, based on the research results, the National Land Agency (Badan Pertanahan Nasional, BPN) provides documentary evidence of the existence of the customary community and draws up a map delineating the boundaries of its territory.

When the existence of a customary community is proven, the provincial governor or district head issues a decree recognising the land-use rights (*hak ulayat*) of the customary community. This gives the community the right to manage the land, and to negotiate the release of its land-use rights to a third party. A communal ownership right is not mentioned as part of this bundle of rights, as only individual ownership can be titled. If a customary community decides to release its rights, then BPN will take over the land, the land will become state land (*tanah negara*) and the third party (the land seekers) will be given title to the land. Because it does not allow for the possibility of formal communal ownership of land, Papua Province Special Regulation 23/2008 has become a legal instrument to secure the *release* of—rather than to *protect*—the ownership rights of customary landowners. The regulation therefore needs to be revised in accordance with Minister of Agrarian Affairs and Spatial Planning Regulation 9/2015, which allows communal title to land to be granted in Papua.

Despite this bias in the implementing regulation, in practice outsiders seeking to acquire land in Papua, including government agencies and Papuans who are residing outside their homeland, generally seem to adhere to the local rules on customary land tenure. These rules require land seekers to obtain the consent of an individual clan member, or the whole clan or tribe, to a land release. The BPN office in Papua province also accepts this practice; it grants new land titles only after the right to the land has been released by the clan or tribe and handed over to the land seeker.

In short, there is a gap between what the state, through the formal land law, and Papuans, through their customary law, recognise as legal. Investors could claim that this represents a legal failure, in that the formal land law is being delegitimised by indigenous Papuan customary law. Yet, this gap also creates opportunities for land seekers, because they are able to use whichever law best suits their interests. In Papua, land seekers are more likely to choose to use customary law as the first step to legal assurance of a land rights transfer. We will see this below, in our examination of the negotiations for access to land and other resources for the Merauke Food and Energy Estate.

THE MERAUKE FOOD AND ENERGY ESTATE

The idea of Papua as a centre of food and energy production pre-dates the New Order era. In the Dutch colonial period, Merauke was designated as the location of a large, experimental rice estate that was intended to supply the whole of Papua (Savitri 2013). Then, from the beginning of the New Order, mining, logging and transmigration projects were implemented widely to promote development (Colchester 1986). Today, investment continues to flow into logging, pulp and paper, and oil palm projects, and into nickel, gold, copper, oil and gas mining, with significant new infrastructure investments planned to support these projects.

During Susilo Bambang Yudhoyono's presidency (2004–14), a global food and energy crisis caused steep increases in the prices of food. This triggered the development of the Merauke Integrated Food and Energy Estate (MIFEE) in Papua province, where about 1.2 million hectares of land were designated for food and bioenergy plantations (Savitri 2013; Ito, Rachman and Savitri 2014). It was expected that the MIFEE projects would be more beneficial for Papuan welfare than the Freeport mine had been, but in fact they became trapped in the 'business-as-usual' thinking of the past, and failed to learn the lessons from Freeport.

A continual flow of investments implies increased pressure on customary resource owners to release their collective rights (*hak ulayat*) to land and other resources for new investment purposes. Like the customary law that is often chosen by outsiders as the first step in negotiating the release of land and resources, the Special Autonomy Law requires compensation to be paid to landowners. However, nearly a decade after Papua Province Special Regulation 23/2008 was issued, not one regulation has been produced to provide guidance on mechanisms of negotiation of compensation to ensure fairness and protection for indigenous Papuans. Such regulations would specify processes for mapping the long-term effects of a resource loss for the social and economic life and livelihoods of a community; and for calculating fair compensation that took into account both the loss of a tangible resource and the loss of income generated by that resource.

Moreover, none of the required provincial or district decrees recognising customary land and resource ownership has been enacted. This means that, at the local level, the regulatory regime for the recognition and protection of customary land and resource ownership remains much the same as it was before the enactment of the Special Autonomy Law. Without intervention by international and local organisations to assist customary communities to understand their rights under international safeguards and human rights standards, the local customary law would be left as the only—and manifestly insufficient—means to guide negotiations.

Negotiations to transfer land and resource rights

By the time it began in 2010, the MIFEE project encompassed more than 46 corporations. We concentrate here on the dealings of two of those companies, Medco Group and (to a lesser extent) Rajawali Group.

Due to the absence of formal legal titles over land, corporations investing in MIFEE projects rely on memorandums of understanding (MOUs) and memorandums of agreement (MOAs) in place of formal contracts with customary landholders. The MOUs provide clear corporate recognition of customary land-ownership rights, although in practice it was generally only as 'lip service'.

In the case of the tree plantation concession area near Zanegi village controlled by Medco, for instance, even though the MOU agreed between the company and the Marind people in 2008 explicitly recognises the clan's ownership of the forests, Medco has never compensated the Marind for the loss of their land. The 'money gift' that the company eventually gave to the Marind was described as a symbol of brotherhood, and not formally written into the MOU as part of the terms of a formal land-transfer contract (rent, lease or sale). The company views this 'gift' as a rental payment for the use of the land. However, the customary landowners consider it to be compensation for the wood taken from the land, not for the land itself, which remains theirs to use as they wish, and has certainly not been sold, leased or expropriated. This means that the MOU does not make any provision for the loss of land and livelihoods during the 60-year timeframe of the 'contract', and raises questions about the status of the land when the 'contract' expires.

The MOU obliges Medco to hire the landowners as company workers. The company fulfilled this obligation, recruiting the Marind as daily wage labourers (*buruh harian lepas*). Later on, however, the management applied a worker selection procedure that required the company's employees to provide education and health certificates. The workers' inability to comply with this new requirement was then used to justify the dismissal of almost all Marind workers in Zanegi. The MOU also requires Medco to fulfil certain social responsibilities (as one would expect of a 'big brother'), such as giving donations for church renovations, funding teachers and support for schools, lending the community a truck for transport purposes and helping to establish a local electricity supply. However, these acts of charity have been insufficient to compensate the community for the clearing of 3,000 hectares of forest, including sago forest and sacred places, for the loss of the plants and animals living in those forests, which played an important role in fulfilling nutritional and other household needs, and for deteriorating water and air quality, which has caused tuberculosis and other illnesses to spread through the village.

The process of negotiating a land-use agreement starts with a series of meetings between the land-seeking corporation and the customary landowners. State officials are often present at these meetings, ostensibly to 'translate' the corporate business plan into clear—though not necessarily transparent—vernacular terms, and so promote the project to customary landowners. Commonly, the concept of benefit sharing and an equal relationship between the capital owners and the landowners is expressed in traditional terms of reciprocity of brotherhood and kinship ties. State and corporate actors often manipulate the information they provide to customary communities, interpreting it in such a way as to ensure the landowners' consent. In the beginning, this tactic was largely successful in gaining the agreement of customary communities to MIFEE projects, making the eventual signing of an MOU or MOA merely ceremonial.

After two years of MIFEE project implementation, however, civil society organisations began to play an important role in providing more complete and nuanced information to customary communities, to counter that provided by corporations and government officials (Ginting and Pye 2011). National and local NGOs made documentaries, produced books and bulletins, and conducted meetings and discussions with locals to provide a more critical understanding of the negative effects of large-scale projects. Their activities spread the seeds of discontent, triggering the formation of groups advocating against MIFEE projects at the national and international levels, with support from NGO coalitions. Up to 2012, however, this high-level advocacy was not successful in halting the process of land acquisition, which appeared unstoppable.

The intervention of external parties has consolidated divisions within the Marind that pre-date the contact between them and various companies. The first contact between the Marind and a corporation such as Medco usually begins with the company approaching the head of the clan to ask about land ownership status. According to custom, only a clan head can have direct contact with the corporation and is able to negotiate the terms of land utilisation. However, the agreements reached between corporations and clan heads have tended to favour some community members over others, creating tensions between clan members.

The compensation paid by Medco transformed the Zanegi community's land and wood into a commodity with a commercial value of billions of rupiah. This benefited the customary owners of the forests where the wood was found much more than it did the landless households who were simply borrowers of the land. Craving more compensation money, some customary landowners turned to sorcery to try to influence the decision of the clan head to release more wood to the corporation. Landless households, on the other hand, suddenly felt deprived because of their landlessness, even though this had never previously mattered in

Marind life due to the tradition of sharing and reciprocity. The commercialisation of the forest resource has eroded the tradition of sharing and reciprocity, creating tension and anxiety among the Marind.

Renegotiation of land and resource agreements

The customary landowners of two MIFEE sites where thousands of hectares of forest have been cleared (Zanegi and Domande) have experienced growing discontent and resentment because of unfulfilled promises, the shock of losing their livelihoods, drastic changes to the landscape, dismissal as company workers despite earlier promises to the contrary, and a sudden consciousness of being deceived. This has driven them to demand renegotiation of their agreements with the companies concerned, Medco and Rajawali, and more compensation. Following a series of protests and demonstrations, Medco and Rajawali developed new corporate social responsibility (CSR) programs to provide rice fields, vegetable gardens and rubber gardens for the customary landowners;[6] adopted a strategy of conducting one-on-one negotiations with individuals rather than group or community negotiations; built new security infrastructure (fences, guard posts and warning signs); and recruited clan members as security staff. This last activity was meant to localise the companies' security arrangements and provide local employment. In practice, however, it only deepened internal divisions within the clans, by creating a new category of worker—the 'company guard'—with the power to dominate other clan members.

The implementing framework for the Special Autonomy Law does not explicitly recognise or require compensation for the loss of income, livelihoods and living standards arising from a resource loss. Neither does it call for the provision of jobs to replace lost income streams; include an explicit requirement to maintain customary communities' food security; explicitly recognise and address impoverishment risks; or set a benchmark objective for the living standard to be achieved through compensation and other assistance for resource losers. For their part, the proponents of MIFEE projects in Merauke never intended to remedy losses of subsistence, income and livelihoods after establishing thousands of hectares of plantations.

From being hunters and gatherers, some rural community members have managed to adapt to lives as daily wage labourers, while the better-educated have obtained better-paid positions as drivers, security guards and CSR program staff. But the majority of clan members who suppos-

6 According to Law 40/2007 on Limited Liability Companies, every business entity is obliged to develop a CSR program.

edly became rich through the payment of compensation for their land have spent the money on luxury goods, and ended up with less land, no money and no jobs. Overall, the MIFEE project has increased the vulnerability of the majority of rural households.

PRODUCTION AND REPRODUCTION OF VULNERABILITIES

In the context of the social-ecological system or human–environment interaction, the concept of vulnerability is a powerful tool to describe states of susceptibility to harm, powerlessness and marginality of both physical and social systems, and to guide normative analysis of actions to enhance well-being through reduction of risk (Adger 2006: 268). In the context of development, Chambers (2006: 33) explains that vulnerability is not the same as poverty, but refers to defencelessness, insecurity and exposure to risk, shocks and stress after facing contingencies. He also asserts that defencelessness does not entail inability to cope, but a lack of means to cope without damaging loss, which may include loss of physical strength, impoverishment, becoming socially dependent, feeling humiliated or being psychologically harmed. We use this meaning of vulnerability to explain the conditions of indigenous Papuans when they enter a process of land/resource negotiation or renegotiation with a corporation. We also acknowledge that the vulnerabilities produced by this process are related to the changing human–environment interaction that results from loss of land and damage to natural forest and marine ecosystems, which harms the people whose lives depend on them.

During the negotiations for the transfer of their land and resources, the Marind did not envisage the risks of the MIFEE project, including the consequences of losing their traditional livelihoods (Zakaria, Kleden and Samperante 2011). They expected life to change for the better as they moved from being hunters and gatherers to company employees; as one clan head said, 'the people will be elevated from ignorance to knowledge' (*manusia diolah dari tidak tahu menjadi tahu*).[7] In reality, however, the change exposed them to a state of vulnerability: employment as lowly cleaners and daily wage labourers, and then dismissal, leaving them without jobs and with few alternative sources of livelihood.

Social differentiation between large landowners, smaller landowners and the landless, and between clan members with stronger and weaker claims to customary land, led to deprivation for some of the Marind as those different types of rights were materialised. Unequal compensation due to differing degrees of rights triggered jealousy, tensions, anxi-

7 Interview by Laksmi Adriani Savitri, Zanegi village, 6 March 2012.

ety and internal conflict within and between clans. These unanticipated effects of the negotiation process led to demands for the renegotiation of agreements as a means to cope with tension and loss. Unfortunately, however, these renegotiations did not produce greater security, but reproduced vulnerability, exposing the Marind to even sharper internal differentiation, deeper divisions and more conflict, as expressed by their increasing fear of sorcery. To cope with these harmful effects, the Marind have conducted customary rituals to make peace among the clans; to avoid impoverishment, some have found new jobs working for migrant traders as daily wage labourers.

Why has the Special Autonomy Law failed to prevent the production and reproduction of vulnerabilities? There are three main reasons for this. First, the law legalises positive discrimination in favour of indigenous Papuans but fails to anticipate the consequences of the loss of communal rights (*hak ulayat*). It gives customary communities the power to make claims as collective land/resource owners, and to demand limited compensation. This position forces corporations to recognise customary land/resource ownership of indigenous Papuans, despite the lack of formal government recognition of customary ownership rights. But although the law articulates a requirement for compensation for the loss of a full range of *ulayat* rights in very general terms, it does not explicitly set out what this might mean for customary communities that depend on those rights.

The Special Autonomy Law does not, for example, recognise or require compensation for the loss of income, livelihoods and living standards arising from a resource loss, call for the provision of jobs to replace lost income streams or include an explicit requirement to maintain customary communities' food security. It does not recognise or address impoverishment risks that include, more widely, risks to health and well-being through difficult-to-value lost cultural continuity or through resource-use changes; nor does it set a benchmark objective for the living standard to be achieved through compensation and other assistance for resource losers. It does not acknowledge that the full range of impacts on a community may not be apparent when negotiations begin, but may only emerge over the longer term. The framework of the Special Autonomy Law, therefore, insufficiently recognises the risks facing communities from losing the resources on which they base their livelihoods and living standards, and which form a basis for their social organisation, and for their sense of identity and selfhood. It does not sufficiently spell out the long-term impoverishment risks and human rights implications of resource losses, or link them to explicit human rights objectives. Hence, the promised recognition of customary resource-ownership rights is illusory. As a result, the law has only marginally improved the bargaining

power of customary resource users, and does not address their vulnerability in the face of resource losses.

Second, the Special Autonomy Law does not provide for free, prior and informed consent (FPIC), a mechanism to give all members of a customary community the choice to give or withhold their consent to developments that affect them. FPIC entails that all members of a resource-losing group have a voice in informed negotiations and are given a clear 'no-displacement' option (Price 2015a). Civil society actors increasingly draw on international human-rights norms and values, including FPIC, to protect communities vulnerable to loss of land and food security, with the application of those norms and values mediated through pressures arising from state agencies and procedures, corporate developers and social hierarchies (Hadiprayitno 2015).

Third, negotiations take place in a rapidly changing socio-cultural context in Papua, in which inequalities, preconceptions and stereotypes—the persistent prejudices and 'stone-age' imagery faced by indigenous Papuans (Slama and Munro 2015)—find new guises in new hierarchies, and increasingly resonate in novel configurations in 'real-time' online spaces. Together, these elements work in dynamic ways to produce resurgent, reworked customary identities; realigned hierarchies as local elites compete for control of funds, including development funds provided under the Special Autonomy Law;[8] overlapping land claims between the state, corporations, smallholders and customary users; and divergent responses of customary communities to varying levels of force, coercion, pressure, manipulation and persuasion. In addition, the desire for modernity (wealth, a 'decent job', education) is a very strong driver for rural people in accepting any kind of deal. In other words, the Special Autonomy Law exposes the customary resource holders to increased pressure to lease or transfer their land, but without sufficient safeguards to ensure their continuity of resource ownership and well-being. Under such conditions, land and resource holders can easily be manipulated into making ill-informed decisions.

There is a basic disjuncture between indigenous Papuan aspirations, as only partially expressed in the Special Autonomy Law, and government remedies as formalised and contextualised in the law's implementing framework. Government remedies for Papuan tensions continue to focus on creating peace and harmony through economic development, facilitated by approvals for large-scale resource extraction projects. Yet, Papua's contested integration into Indonesia since 1961 and the controversial 1969 Act of Free Choice, together with Papua's subsequent his-

8 The Special Autonomy Law makes provision for a 25-year development fund, to operate from 2001 to 2026.

tory, ensure that it remains a land of conflict (Widjojo et al. 2010). The struggle for independence remains alive despite decades of state coercion and the use of military force, and the deployment of funds under the Special Autonomy Law (McGibbon 2004, 2006). The Special Autonomy Law, it appears, has failed to address the root causes of indigenous Papuan marginality because, as a conflict remedy, it was never intended or designed to do so (Chauvel and Bakti 2004; De Soares 2004). In fact, Widjojo et al. (2010) find that its only contribution so far has been to increase development funds, rather than autonomy, at the local level.

CONCLUSIONS

The Special Autonomy Law appears incapable of addressing reproductions of vulnerability in the process of large-scale land transfers. Rather than securing formal customary resource rights, its enabling regulation has been designed to legalise mechanisms for releasing such rights, in which context the law does not provide safeguards to guarantee the subsistence, income, livelihoods and well-being of resource losers. There is an absence of provincial and district regulations to protect indigenous Papuans during the negotiation process and to ensure that they receive proper and sufficient compensation. In the MIFEE case, the negotiation process involved asymmetrical power plays that benefited the large corporations as the more powerful players. This case illustrates the ways in which state actors, under the guise of playing the role of a neutral 'middleperson', actually persuade customary landholders to consent to the release of their land to developers on unfavourable terms that do little to clarify or address the likely future impacts. In practice, landholders did not receive adequate information about the proposed MIFEE project, let alone assistance in tackling the complexities of negotiating the release of their land, at least until civil society organisations began to intervene.

Unregulated large-scale land deals that are not subject to international safeguards and standards—and most are not (Price 2015b)—risk impoverishing land losers through a mix of asset depletion, marginalisation, unravelling of household formations, conflict, and loss of food security, social security and income. If this circle of production and reproduction of vulnerabilities of indigenous Papuans is not recognised by the state, deprivation and dissatisfaction could remain as the political machine, triggering continuous conflict that keeps security and protection out of the reach of indigenous Papuans.

If the Special Autonomy Law and related regulations are to be the only means of producing secure land and resource rights, ensuring fair deals and protecting indigenous Papuans from deeper vulnerability, the

government may be willing to adopt certain strategies and mechanisms to strengthen the law in ways that would support the supposed 'willing sellers' in negotiations. While it is difficult to legislate away the 'stone-age' images and prejudices alluded to earlier, the Indonesian government could, for example:

1 Appoint independent monitors to record the negotiation process, documenting, for instance, the relative access of both parties to all relevant information and, where necessary, ensuring access of 'sellers' to information, to low- or no-cost legal advice, and to immediate, independent, low-cost grievance-redress channels for land and resource loss cases.
2 Recognise and confirm customary communities' resource rights (*hak ulayat*) as a legitimate form of legal land title and give tangible support to their realisation in practice. This would include providing back-up resource surveys, demarcation services and titling schemes to formalise and legalise *hak ulayat* titles, and clarifying these rights in the context of national legal frameworks, including legal clarification that the terms 'leasing' or 'rental' should entail return of the land or other resource to the resource-losing clans upon completion.
3 Reformulate or revise the Special Autonomy Law and its associated regulations to provide a safeguard for resource losers that recognises the importance of incomes, livelihoods, living standards, food security and socio-cultural parameters in building and maintaining community cohesion.
4 Use social impact assessment and, where relevant, environmental impact assessment to determine, document and propose mitigation for a range of likely losses and their anticipated effects on food security, community safety, health and cohesion, incomes, livelihoods and levels of social differentiation.
5 Ensure commitments from developers to take responsibility for tangible improvements in incomes, livelihoods, food security and living standards.

In the context of wider Papuan aspirations, such measures may represent an important but insufficient step, dependent on the goodwill of investors. More far-reaching changes would see the government take a proactive and visionary direction, based on dialogue with indigenous Papuans and international authorities, to ensure rapid realisation of an enhanced Special Autonomy Law. The government could, for example, adopt agrarian policies that favoured the selection of distributive rather than displacing projects; ensure close control of private developers to minimise the loss of customary resources; rectify unfavourable outcomes for customary users, particularly where livelihoods have been lost, cul-

ture and identity threatened, and communities impoverished; favour small-scale producers over large estates in awarding land-use permits; and guarantee customary rights to resources. As a signatory to the 2007 Declaration on the Rights of Indigenous Peoples, the Indonesian government should also act to realise the right to exercise free, prior and informed consent. This would mean, in particular, ensuring that there was a genuine no-displacement option for the people affected by projects, incorporating FPIC into the framework of the Special Autonomy Law and using new forms of human rights impact assessment where relevant (for an example, see IBLF and IFC 2010).

The possibility is compelling of negotiations becoming a 'real test of the social justice credentials' in which 'it is indigenous people who set the framework for negotiations, as opposed to the usual situation of the company leading and convening consultations with indigenous peoples' (McKenna and Braithwaite 2011: 335). The MIFEE project negotiations discussed in this chapter were clearly project-led, and focused on how to secure the resource base for the companies' investments. Turning this around to give local people the lead in setting priorities and selecting projects would constitute a major step towards increased agency—and empowerment—for indigenous Papuans.

REFERENCES

Adger, N.W. (2006) 'Vulnerability', *Global Environmental Change*, 16(3): 268–81.

Amiruddin and A.J. de Soares (2003) *Perjuangan Amungme* [The Struggle of the Amungme], Elsham, Jakarta.

Borras, S.M. (2001) 'State–society relations in land reform implementation in the Philippines', *Development and Change*, 32: 545–75.

Borras, S.M. (2006) 'The Philippine land reform in comparative perspective: some conceptual and methodological implications', *Journal of Agrarian Change*, 6(1): 69–101.

Chambers, R. (2006) 'Vulnerability, coping and policy', *IDS Bulletin*, 37(4): 33–40.

Chauvel, R. and I.K. Bakti (2004) 'The Papua conflict: Jakarta's perceptions and policies', Policy Studies 5, East-West Center, Washington, DC.

Colchester, M. (1986) 'The struggle for land: tribal people in the transmigration programme', *Ecologist*, 16(2–3): 99–110.

Cotula, L., S. Vermeulen, R. Leonard and J. Keeley (2009) *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, FAO, IIED and IFAD, Rome.

Cotula, L., S. Vermeulen, P. Mathieu and C. Toulmin (2011) 'Agricultural investment and international land deals: evidence from a multi-country study in Africa', *Food Security*, 3: S99–S113.

De Soares, A.J. (2004) 'The impact of corporate strategy on community dynamics: a case study of the Freeport Mining Company in West Papua, Indonesia', *International Journal on Minority and Group Rights*, 11: 115–42.

Ginting, L. and O. Pye (2013) 'Resisting agribusiness development: the Merauke Integrated Food and Energy Estate in West Papua, Indonesia', *ASEAS: Austrian Journal of South-east Asian Studies*, 6(1): 160–82.

Gutierrez, E. and S.M. Borras (2004) 'The Moro conflict: landlessness and misdirected state policies', Policy Studies 8, East-West Center, Washington, DC.

Hadiprayitno, I. (2015) 'Behind transformation: the right to food, agricultural modernisation and indigenous peoples in Papua, Indonesia', *Human Rights Review*, 16(2): 123–41.

IBLF and IFC (International Business Leaders Forum and International Finance Corporation) (2010) 'Guide to human rights impact assessment and management (HRIAM)', IBLF and IFC, in association with the United Nations Global Compact, Washington, DC. Available at http://www.ifc.org/wps/wcm/connect/8ecd35004c0cb230884bc9ec6f601fe4/hriam-guide-092011.pdf?MOD=AJPERES

Ito, T., N.F. Rachman and L.A. Savitri (2014) 'Power to make land dispossession acceptable: a policy discourse analysis of the Merauke Integrated Food and Energy Estate (MIFEE), Papua, Indonesia', *Journal of Peasant Studies*, 41(1): 29–50.

Koentjaraningrat (1994) *Irian Jaya: Membangun Masyarakat Majemuk* [Irian Jaya: Developing a Plural Society], Penerbit Djambatan, Jakarta.

McGibbon, R. (2004) 'Plural society in peril: migration, economic change, and the Papua conflict', Policy Studies 13, East-West Center, Washington, DC.

McGibbon, R. (2006) 'Pitfalls of Papua: understanding the conflict and its place in Australia–Indonesia relations', Lowy Institute Paper 13, Lowy Institute for International Policy, Sydney.

McKenna, K. and J. Braithwaite (2011) 'Large corporations and obstacles to peace in Papua', in P. King, J. Elmslie and C. Webb-Cannon (eds) *Comprehending West Papua*, Centre for Peace and Conflict Studies, University of Sydney, Sydney: 318–38.

Narula, S. (2013) 'The global land rush: markets, rights, and the politics of food', New York University Public Law and Legal Theory Working Paper 412, New York University School of Law, New York, NY.

Price, S. (2015a) 'A no-displacement option? Rights, risks and negotiated settlement in development displacement', *Development in Practice*, 25(5): 673–85.

Price, S. (2015b) 'Is there a global safeguard for development displacement?', in I. Satiroglu and N. Choi (eds) *Development-induced Displacement and Resettlement: Revisiting the Knowns and Revealing the Unknowns*, Routledge Studies in Development, Displacement and Resettlement, Routledge, Oxford: 127–41.

Resosudarmo, B.R. and F. Jotzo (2009) *Working with Nature against Poverty*, Institute of Southeast Asian Studies, Singapore.

Rifai-Hasan, P.A. (2010) 'Development, power, and the mining industry in Papua: a study of Freeport Indonesia', *Journal of Business Ethics*, 89(2): 129–43.

Savitri, L.A. (2013) *Korporasi dan Politik Perampasan Tanah* [Corporations and the Politics of Land Grabbing], Insist Press, Yogyakarta.

Slama, M. and J. Munro (eds) (2015) *From 'Stone-age' to 'Real-time': Exploring Papuan Temporalities, Mobilities and Religiosities*, ANU Press, Canberra.

Tebay, N.K. (2012) *Angkat Pena demi Dialog Papua: Kumpulan Artikel Opini tentang Dialog Jakarta–Papua Tahun 2001–2011* [Writing for Papuan Dialogue: Compilation of Opinion Articles on the Jakarta–Papua Dialogue 2001–2011], Interfidei, Yogyakarta.

Warman, K. (2010) *Hukum Agraria di Indonesia* [Agrarian Law in Indonesia], HuMA, Van Vollenhoven Institute and KITLV, Jakarta.

Widjojo, M.S., A. Elisabeth, Amiruddin, C. Pamungkas and R. Dewi (2009) *Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future*, Indonesian Institute of Sciences (LIPI), Yayasan TIFA and Yayasan Obor Indonesia, Jakarta.

Zakaria, Y., E.O. Kleden and F. Samperante (2011) 'MIFEE: tak terjangkau angan Malind. Catatan atas upaya percepatan pembangunan MIFEE di kabupaten Merauke, Papua' [MIFEE: beyond Malind imagination. Notes on the acceleration of MIFEE development in Merauke ditrict, Papua], Pusat Studi dan Advokasi Hak-hak Masyarakat Adat (Pusaka), Jakarta.

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